



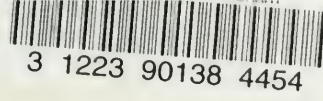
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# Appendix to the Journal of the Senate

LEGISLATURE OF THE STATE OF CALIFORNIA  
1969 REGULAR SESSION

## REPORTS

January 6, 1969—September 10, 1969



HON. ED REINECKE  
*President of the Senate*

HON. HUGH M. BURNS  
*President pro Tempore*

C. D. ALEXANDER  
*Secretary of the Senate*

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Committee Report





A STAFF REPORT TO THE  
**SENATE COMMITTEE ON REVENUE  
AND TAXATION**

on Bills and Constitutional Amendments Referred in 1968  
to the Committee for Study

by

WILLIS L. CULVER, *Consultant*

May 1969

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## LETTER OF TRANSMITTAL

May 12, 1969

HONORABLE EDWARD J. REINECKE, *President*  
AND MEMBERS OF THE SENATE

Gentlemen:

I am pleased to transmit to the Senate a report on bills and constitutional amendments referred in 1968 to the Committee on Revenue and Taxation for study.

Respectfully submitted,

WALTER W. STIERN, *Chairman*  
Senate Committee on Revenue  
and Taxation



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## I. Personal Income Tax: Reporting and Collecting by Reference to Federal Law: Proposition 4: SCA 18 (Marks)

The purpose of Proposition 4 on the 1968 general election ballot was to simplify the reporting and collecting of state personal income taxes.

The rule of law prohibiting a delegation of legislative power without proper standards has been interpreted to prohibit the Legislature from adopting future amendments to federal law. As a result, the Legislature has been inhibited from making the state income tax a percentage of the federal income tax unless the State Constitution is amended to authorize that move.

Proposition 4 would have authorized the Legislature to make state personal income tax law conform to federal income tax law as the federal law might exist in the future. Proposition 4 would not have authorized the Legislature to use the amount of tax computed under federal law as the base for reporting and computing state income tax. Proposition 4, moreover, specifically prohibited the Legislature from making state income tax rates go up or down in accordance with changes in federal tax rates.

The voters rejected Proposition 4 by a vote of 3,190,542 to 2,881,249.

Proposition 14 on the 1966 general election ballot, like Proposition 4 of 1968, would have authorized the Legislature to make state personal income tax law conform to federal income tax law as the federal tax law might exist in the future. In addition, and unlike Proposition 4, Proposition 14 would have authorized the state to use the amount of tax computed under federal law as the base for reporting and computing the state income tax.

The voters rejected Proposition 14 by a vote of 2,709,071 to 2,536,770.

Present law authorizes the state to make state law conform to federal law as federal law exists at any given time. The Legislature has chosen not to do this for policy reasons. The chief reason is that such a change in state law would result in major shifts in tax burden and, depending on the provisions of the conformity proposal, might result in a decrease in revenue from the personal income tax. Other possible reasons are as follows:

(a) The undesirability of delegating the state's legislative powers over state taxation to Congress;

(b) The desirability of reserving the legislative powers over state taxation to the State Legislature so that the state may determine for itself the persons who should bear the tax burden and the extent thereof based upon factors peculiar to the state rather than upon national factors; and

(c) The recognition that 100-percent conformity is not possible because of federal and state constitutional limitations.

### *Conclusion*

The voters, apparently in recognition of the disadvantages of making state personal income tax law conform to federal income tax law, in two successive elections have defeated the proposal. Recognizing that conformity is a worthwhile goal, the Legislature should continue its present policy of considering each conformity proposal on its own merits.



## II. Personal Income Tax and Bank and Corporation Tax: Exclusion of Income Received Through Government Acquisition of Real Property: SB 381 (Harmer)

When a governmental agency condemns property, or purchases property through threat of condemnation, and the money received by the taxpayer is greater than the adjusted basis of the property, the gain is taxable, unless the taxpayer uses the money to buy property similar to that taken. If the taxpayer buys similar property, the gain from the government conversion is taxed to the extent that the proceeds of the conversion exceed the cost of the replacement; if the cost of the replacement property is equal to or greater than the proceeds from the conversion, there is no tax on the proceeds.

SB 381 provides that any gain from such conversions is untaxable.

The proponents of SB 381 base their arguments on alleged inequities associated with (1) government acquisition of real property and (2) the taxation of capital gains.

The alleged inequities associated with government acquisition of real property are: (a) Since real property is unique, money cannot compensate for government taking. (b) Government purchases of real property do not include compensation for the risk that the taxpayer, in purchasing replacement property, will pay too high a price, thereby subjecting himself to a loss. The alleged inequities associated with the taxation of capital gains are: (c) Taxing capital gains is unfair because inflation makes such gains illusory. (d) The taxation in one year of the gain from an involuntary conversion causes the taxpayer to lose the opportunity to reduce taxes by spreading income over several years.

The proponents of SB 381 argue that these inequities will be alleviated if SB 381 is passed. The untaxing of gains from government acquisitions, it is said, will make less burdensome the loss of unique property, compensate the taxpayer for the risk that he will buy replacement property unwisely, prevent the government from taking money which reflects the effects of inflation, and compensate the taxpayer for the loss of the right to spread income over several years.

In opposition to SB 381, it can be argued that the alleged inequities are of questionable validity.

The following comments are addressed to the alleged inequities listed above. Comment (a) relates to alleged inequity (a) and so on.

Comment (a). While it is true that real property is unique, it is doubtful that money cannot compensate for its loss. SB 381, for example, would diminish the alleged inequity by increasing the monetary value of the compensation award. Such an increase need not be accomplished indirectly through the tax system; the compensation award can be increased.

Comment (b). Although the risk of loss in buying replacement property may not be included in the proceeds from a government conversion, the following factors diminish the force of this alleged inequity: (1) The taxpayer may have benefited from the government acquisition; finding a buyer for real property at its appraised value can be difficult. (2) SB 381 would diminish the alleged inequity by increasing the monetary value of the compensation award. Such an increase need not be accomplished indirectly through the tax system; the compensation award can be increased.

Comment (c). Several considerations diminish the force of the allegation that inflation causes capital gains to be illusory and the argument that the taxation of such gains is unfair.

First, while part of a capital gain may be attributed to inflation, other factors contribute as well. Governmental improvements—schools, highways, water supplies, sewage facilities, recreation facilities, traffic control, fire and police protection, etc.—increase the value of property. Private improvements and other events increase the value of property. Individual cases vary, and it is incorrect to attribute all capital gains to inflation.

Second, present law eliminates one-half of a long-term capital gain from taxation. This eliminates some, if not most, of the inequities which inflation might cause. Indeed, the factor of inflation is one of the major elements in the rationale of giving capital gains preferred income tax treatment.

Third, to the extent that inflation causes capital gains, it does so with respect to all property, not merely property taken by the government. If SB 381 is enacted, a certain group of taxpayers will receive preferred tax treatment on the sole basis that the government is the purchaser of their property. Since inflation falls no harder on such taxpayers than it does on others, such a basis for preferred tax treatment is discriminatory.

Fourth, the law already gives preferred tax treatment to capital gains from involuntary conversions by permitting taxpayers to reinvest the proceeds in replacement property and to avoid, thereby, tax on the gain.

Comment (d). The tax system does not require the taxpayer to lose the opportunity, through an involuntary conversion of property to the government, to spread income. The taxpayer may avoid taxation on an involuntary conversion by purchasing similar real property. He can then exercise his income-spreading ability as he would have done with the converted property.

In further opposition to SB 381, it can be argued that the bill creates new inequities. For example, the bill does not affect involuntary conversions caused by fire, flood, theft, etc. The alleged inequities can apply with as much force to property subjected to conversions through such events.

In his memorandum in opposition to SB 381, Martin Huff, executive officer of the Franchise Tax Board, provides the following example of inequities SB 381 might cause:

Under current federal and state income tax law, if real property involuntarily converted is replaced within a given time with prop-

erty similar or related in service or use to the property converted, no gain on the sale is recognized except to the extent of the proceeds not used for the acquisition of replacement property.

Thus, if real property is taken from a taxpayer by eminent domain proceedings, and he uses the entire receipts from the sale to purchase similar real property, none of the profit on the sale is recognized for tax purposes. If the taxpayer does not elect to replace the property so converted, gain or loss is recognized on the sale the same as in any other sale of property.

This bill would change this well established tax law to provide that under both the Personal Income and Bank and Corporation Tax Laws the receipts would not be subject to tax regardless of whether the taxpayer replaced the converted property. This preferred tax treatment would give a substantial tax advantage to certain taxpayers. For example, suppose that all the residential or other property on one side of a street is condemned in order to construct a freeway. Under the laws of eminent domain all the owners of the condemned property would receive fair market value for their property. Any gain arising out of the condemnation, however, would not be subject to tax even though each owner did not replace the converted property.

Because of the construction of the freeway, all the property on the other side of the street would lose some of its value. If an owner sold such property at a reduced gain, and did not invest the proceeds in other related property, the gain would be subjected to tax. If it was residential property and sold at a loss, the loss would not be deductible since under the law the transaction is considered a personal loss.

Thus, although the same act of condemnation caused the property owners on both sides of the street to dispose of their property, the owners of the property taken directly as a result of the condemnation would receive fair market value for their property, and a favorable tax treatment, whereas the owners on the other side would receive a depressed value for their property, and if a gain was still realized, it would be subjected to tax.

Finally, in considering SB 381, it should be noted that most taxpayers will decide whether to reinvest the proceeds from a government conversion by estimating the effect of federal rather than state law, since federal tax is so much greater than state tax. Taxpayers usually will acquire replacement property to avoid the federal tax. In that situation, state tax also will be avoided.

## Conclusion

Attempting to alleviate inequities, through the untaxing of capital gains, in the price paid by government for real property would create new inequities both in the tax system and in condemnation awards. In the tax system, SB 381 would give a special, discriminatory, advantage to the recipients of capital gain from a government conversion. In condemnation awards, SB 381 would increase the value of the awards erratically, without reference to the value of the condemned property.

If inequities exist in the taxation of capital gains, those inequities should be cured by changing the taxation of capital gains.

If inequities exist in the prices paid by government for real property, those inequities should be cured by changing the laws governing the establishment of those prices.

It is therefore recommended that legislation such as SB 381 not be enacted.



### III. Property Tax: Application of the Welfare Exemption to Homes for the Aged: SB 1170 (Sherman)

Article XIII, Section 1e, of the California Constitution authorizes the Legislature to exempt from property taxation property of nonprofit organizations used for religious, hospital, or charitable purposes. When a home for the aged receives this exemption, the full value of the property is untaxed, though the occupants of the home may have substantial wealth or income.

SB 1170 of the 1968 Regular Session limits the home-for-the-aged exemption to \$3,500 times the number of paying residents of a home. The value of a home attributable to nonpaying residents would continue to be exempt, and any portion of a home used as a hospital would be exempt. A grandfather clause in SB 1170 provides an exemption for that portion of a home attributable to persons in residence on the effective date of the bill.

On November 1, 1962, the Assembly Interim Committee on Revenue and Taxation, reporting on this exemption, recommended that the exemption be limited to \$1,000 for each life-care resident of a home for the aged.<sup>1</sup>

A 1964 study of the Assembly Interim Committee on Revenue and Taxation reviewed the major arguments for and against this exemption.<sup>2</sup>

In March 1965 the Senate Fact Finding Committee on Revenue and Taxation published the following as part of a study of taxation in California:

One group of properties in the welfare category, however, deserves singling out for special mention—those exempted as homes for the aged. In a sense, using the property tax exemption with regard to all of the properties in the welfare category involves subsidizing welfare activities through tax exemptions as a substitute for direct expenditures. In the case of homes for the aged, however, exemption is being granted to a form of property which acts as a direct substitute for, and in competition with, private housing. At the same time, the use of the exemption in this case is tantamount to approving welfare not on the basis of need, but on the basis of a choice of housing which may in many cases be irrelevant to any reasonable index of welfare need. The upshot is a violation of fundamental concepts of tax equity—discrimination between different people similarly situated (i.e., the aged) simply on the basis of where they happen to choose to live. This not only amounts to an irrelevant consideration on which to base a welfare decision but may often result in a positive inequity. For example, one elderly citizen choosing to live in his own home may

<sup>1</sup> California Assembly, *Final Report of the Assembly Interim Committee on Revenue and Taxation*, Vol. 4, No. 7 (Nov. 1, 1962), pp. 11-24.

<sup>2</sup> California Assembly, Interim Committee on Revenue and Taxation, *Taxation of Property in California*, Vol. 4, No. 12 (Dec. 1964), pp. 81-87.

have a very low income and very little wealth. But since he is in his own home which will in the normal course of things be assessed and taxed, he will be a taxpayer. On the other hand, another individual of the same age but with a much larger income and greater stock of wealth might choose to live in a very plush group-living arrangement which goes under the pseudonym of "home for the aged" and which is subject to tax exemption. As a result of such circumstances, and criterion of need is made completely irrelevant: the individual by all measures most able to pay would be exempted from tax, while the one much less well-situated would remain fully liable as a taxpayer.

The foregoing example is far from an abstract case. At the present time, many institutions qualifying for property tax exemptions as homes for the aged are in a cost class that can be afforded only by older persons in relatively good and secure economic status. To the extent that the exemption privilege is justified on welfare considerations, the way the provision is presently administered leaves the door open to abuses both frequent and flagrant. It should be pointed out that the current situation is not fully in control of those charged with administering the welfare for [sic] exemption. The State Board of Equalization is authorized to approve applications for exemptions under the welfare provision. Their attempts to enforce criteria in the granting of these exemptions, however, have been effectively subverted by the position of courts to the effect that wealth is irrelevant to charity. As a result, the Board of Equalization has had little real power over the granting—and limiting—of these exemptions, and has had to let most pass without objection. In any event, the situation now prevailing with regard to "homes for the aged" is one badly in need of legislative action.<sup>3</sup>

In 1967, the Legislature enacted AB 550, requiring homes for the aged to submit to the State Department of Social Welfare and to the State Board of Equalization data regarding their operations.<sup>4</sup>

HR 517 of the 1967 Regular Session directed the State Department of Social Welfare to study the consequences of a specific proposal limiting the exemption of homes for the aged. The department's report *California Homes for the Aging*, was published on June 10, 1968, and was transmitted to the Assembly on June 17, 1968.<sup>5</sup>

On November 28, 1967, the Senate Committee on Revenue and Taxation, meeting in Sacramento, heard testimony on this exemption.<sup>6</sup>

By letter of October 11, 1967, Mr. H. F. Freeman, Executive Secretary of the State Board of Equalization, submitted a proposal to Mr. John G. Veneman, Chairman of the Assembly Committee on Revenue and Taxation, for limiting this exemption. The proposal allows homes for the aged an exemption equal to the value of the assistance granted

<sup>3</sup> California Senate, Fact Finding Committee on Revenue and Taxation, *Property Taxes and Other Local Revenue Sources* (March 1965), pp. 68-69.

<sup>4</sup> 1967 Stats., Ch. 1448; See also 1968 Stats., Ch. 215.

<sup>5</sup> Assembly Journal, June 17, 1968, p. 4477.

<sup>6</sup> California Senate, Subcommittee on Revenue and Taxation, November 27-28, Sacramento, *Transcript*, pp. 190-195, 275-299.

to low-income taxpayers by the Senior Citizens Property Tax Assistance Law.<sup>7</sup>

The Assembly Revenue and Taxation Committee held an interim hearing on the subject of this exemption on January 13, 1969, in Sacramento, at which the State Board of Equalization presented a more refined version of its proposal. Appendix A, page 27, is a reprint of the board's statement to the Assembly committee.

### **Conclusion**

The subject of SB 1170 has been studied at length by committees of both the Senate and the Assembly.

The testimony at the Senate hearing of November 28, 1967, supports the conclusions of earlier studies that the welfare exemption, as applied to homes for the aged, is inequitable and should be limited by legislative action.

New proposals to deal with this problem will come before the Legislature in 1969; careful consideration should be given to them.

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<sup>7</sup> *Revenue and Taxation Code*, Sections 19501-19540.

#### IV. Property Tax: Classification of Property for Assessment and Taxation Purposes: SCA 20 (Marks), SCR 36 (Moscone), and SB 1219 (Moscone)

SCA 20 authorizes the Legislature to define residential real property and to prescribe for the assessment of such property at a ratio different from all other property. "Ratio" means the ratio of assessed value to full cash value.

SCA 36 authorizes the Legislature to classify real property and to provide for the assessment and taxation of the different classes at different rates. In addition, SCA 36 authorizes the Legislature to grant such authorization to county boards of supervisors.

SB 1219, which would become effective if SCA 36 were approved by the electorate, authorizes any county board of supervisors to classify real property and to fix a rate of tax for each class.

##### *Arguments in Favor of This Proposal*

1. The Board of Supervisors of the City and County of San Francisco asserts<sup>1</sup> that the uniform assessment and taxation of property is inequitable to the owner of residential real property because he hasn't the advantages of "tax writeoffs, depreciation and other tax-minimizing features available to the industrial and commercial property taxpayer." The enactment of a property tax classification program would enable state and county government to reduce this alleged inequity.

2. Property tax classification would allow the Legislature to restore nonuniform assessment ratios as they existed by administrative discretion of assessors in some counties prior to the enactment of AB 80 of 1966. AB 80 requires all assessors to observe the constitutional requirement of uniformity in assessing property for taxation.

3. The proposals incorporated in these measures would give the Legislature great flexibility in adjusting the incidence of the property tax on various taxpayers. If SCA 36 were enacted, the Legislature would have virtually unlimited authority to make classifications and to change the tax rates applying to the various classifications.

##### *Arguments Against This Proposal*

1. Except for the judicial requirement of reasonableness, the Legislature would have no standards for determining the number of classes and the rate of taxes to be applied to each class. There would be no test by which the Legislature could decide whether the classifications were good or bad, wise or unwise, fair or inequitable. Only the Legislature could establish such standards, and, even if that were done, the Legislature could not be compelled to observe them.

<sup>1</sup> San Francisco Board of Supervisors, *Resolution No. 9-69*, adopted Dec. 30, 1968; approved Jan. 3, 1969.



2. The proposal would create a difficult administrative problem by requiring the assessor to decide the classification of all property. For example, an assessor might have to decide whether a farm was commercial property or a country estate, and he would often have to divide commercial properties between living and residential quarters.

Since, on many occasions, assessors would have to exercise discretion, they would be subjected to pressures by taxpayers. Property tax classification is an invitation to corrupt practices.

3. If the Legislature is given the power to classify property for assessment and taxation at different rates, the Legislature will come under pressure to grant preferential tax treatment to various interest groups.

The following article, published by the California Taxpayers' Association,<sup>2</sup> illustrates this hazard by reciting trends in Arizona and Minnesota:

Property classification for the purpose of setting varying tax rates will continue to be proposed in California.

Last year Arizona adopted this system and now for every \$100 of property taxes paid by homeowners and farmers, businesses and industry pay \$139; utilities pay \$222; and mines and railroads \$333.

Minnesota has had the system longer than any state with the most comprehensive system of classification. It started with four classes and now has 20 with pressure for over 200.

Critics of the Minnesota tax claim the tax base has been eroded and high rates have resulted. Minnesota is seventh highest in property tax paid as a percent of personal income. They also say the role of the assessor has been complicated and there are constant pressures from groups seeking lower ratios. The special interest groups which are most influential have the best results.

They also claim classification has made a poor tax climate in Minnesota.

4. The enactment of this proposal would require major readjustments in the system of apportioning state funds to school districts. Decreases in the assessed value of property would, under present law, require major infusions of state funds into the system and could create new inequities in a system presently under heavy criticism.

5. On November 5, 1968, the electorate approved the homeowners' property tax exemption, which provides for a \$750 exemption on single-family and duplex, owner-occupied dwellings. The constitutional amendment creating the exemption authorizes the Legislature to increase the exemption and requires the Legislature to reimburse local government for revenue losses caused by the exemption.

The homeowners' property tax exemption is a major legislative program designed to provide property tax relief. Proposals such as SCA 20, SCA 36, and SB 1219 are aimed at property tax relief, but constitute a different approach to the matter.

<sup>2</sup> "Minnesota and Arizona Tax by Property Class," *Cal-Tax News*, August 1968, p. 3.

***Conclusion***

Since the Legislature and the electorate have enacted a program of property tax relief, no new program should be enacted until the present program can be evaluated. The consideration of such measures as SCA 20, SCA 36, and SB 1219 should be deferred until the Legislature has an opportunity to study the consequences of the homeowners' property tax exemption.

## V. Property Tax: Open Space Land: Preferential Assessment of Agricultural Land: SB 1049 (Schmitz)

As a temporary implementation of Article 28 of the California Constitution, present law<sup>1</sup> prohibits assessors from considering sales data in assessing land subject to a contract or an agreement authorized by the Land Conservation Act of 1965 (Williamson Act), or in assessing land covered by a scenic easement deed or a comparable legal instrument.<sup>2</sup>

SB 1049 would, in addition, prohibit assessors from considering sales data in valuing land zoned by a city or by a county exclusively for agricultural uses, forestry uses, uses compatible with agricultural enterprises, uses compatible with forestry uses, and recreational uses.

To qualify for such preferential assessment, SB 1049 would require the land to be used in the manner prescribed by the zoning ordinance and would require one of the following two indications that the zoning ordinance would not be changed for six years: (a) a provision to that effect in the zoning ordinance, or (b) a written statement of intention, issued by the governing board that enacted the zoning ordinance, that the zoning will not be modified in the predictable future.

If such a city or county did in fact change the zoning to residential, commercial, or other uses, SB 1049 would require the taxpayer to pay, as deferred taxes, an amount "equal to 15 percent of the difference obtained by subtracting the value of the open space land on the lien date next preceding the change of zoning from the full cash value determined immediately following the rezoning."

At the general election of 1966, the voters approved Article 28 of the Constitution, which provides for the assessment of open space land subject to an enforceable restriction on the basis of its income-producing capability, as restricted rather than on the basis of market data. Article 28 authorizes the Legislature to define "enforceable restriction."

In 1967, the Legislature took two steps to implement Article 28. First, the Legislature enacted AB 2011, providing for the temporary implementation of Article 28 as described in the first paragraph above. This temporary implementation will be in effect until the 61st day following the adjournment of the Regular Session of the 1970 Legislature. Thus, the special assessment procedure provided by AB 2011 will be in effect for the 1968, 1969, and 1970 tax years.

Second, the Legislature enacted Assembly Concurrent Resolution No. 26, creating the Joint Legislative Committee on Open Space Lands. The committee was "directed to ascertain, study and analyze all facts relating to the grant of authority conferred upon the Legislature by Article 28 of the Constitution of the State of California." The com-

<sup>1</sup> *Revenue and Taxation Code*, Sections 421 to 425.

<sup>2</sup> *Government Code*, Section 6950 et seq.

mittee was directed to study any "needed revision of . . . laws . . . relating to open space land and Article 28 of the Constitution." The committee was directed to report its recommendations for appropriate legislation.

The committee consists of four Members of the Assembly, appointed by the Speaker, and four Members of the Senate, appointed by the Rules Committee of the Senate. The committee was authorized to establish a Citizens' Advisory Committee to assist the committee in its work.

Assembly Concurrent Resolution 26 appropriated \$35,000 for the expenses of the joint committee.

In 1968, the Assembly enacted Concurrent Resolution No. 60, which extended indefinitely the life of the Joint Legislative Committee on Open Space Lands and appropriated \$175,000 for committee expenses. Assembly Concurrent Resolution 60 directed the committee to make a preliminary report to the Legislature, including recommendations for legislation, no later than the 30th legislative day of the 1969 Regular Session. Assembly Concurrent Resolution 60 directs the committee to make a final report of its findings and recommendations no later than the 30th legislative day of the 1970 Regular Session.

The Joint Legislative Committee on Open Space Lands consists of the following legislators: Assemblymen: John T. Knox (chairman), John P. Quimby, and Edwin L. Z'berg; Senators: Robert J. Lagomarsino (Vice Chairman), William E. Coombs, Walter W. Stiern, and Howard Way.

On December 27, 1967, Chairman Knox announced the appointment of a 25-member advisory committee to assist the joint committee in its work. The Technical Advisory Committee consists of the following persons: Edward D. Landels, San Francisco (Chairman); Walter V. Hays, San Jose (Vice Chairman); Floyd B. Cerini, Los Angeles; Robert H. Morris, San Francisco; William T. Balch, Bakersfield; David M. Bryant, Jr., Pond; William Staiger, Sacramento; William M. Beaty, Redding; Dr. Leslie E. Carbert, San Francisco; De Witt Krueger, Berkeley; Leslie Howe, Sacramento; Arlen K. Bean, Sacramento; William McDougall, Sacramento; Bert W. Broemmell, San Rafael; John P. Whittemore, Santa Barbara; Harold Tokmakian, Fresno; Dr. J. Herbert Snyder, Davis; Don Benninghoven, Sacramento; Herbert F. Sturdy, Los Angeles; Marshall Mayer, Redwood City; Dr. Ronald W. Cox, Sacramento; Reverdy Johnson, San Francisco; William Turnbull, Jr., Berkeley; Hugo Fisher, San Diego; David Kelley, Hemet.

The joint committee held three hearings in Sacramento in 1968: March 12, April 16, and May 7. Testimony was taken from interested persons. Included in the testimony were recommendations that legislation such as SB 1049 be enacted.

The joint committee is considering whether zoning is an appropriate device for the implementation of Article 28 and will report on this subject either in its preliminary report in 1969 or in its final report in 1970.

### *Recommendation*

It is recommended that no legislation such as SB 1049 be enacted until the Joint Legislative Committee on Open Space Lands reports on the subject of SB 1049.



## VI. Property Tax: Postponement of Tax Until Time of Death: SB 1108 (Marks)

SB 1108, as amended July 26, 1968, authorizes a person 65 years of age or older to postpone until death the payment of property taxes on his principal place of residence. To postpone the property taxes, the taxpayer files a claim with the assessor by April 15 each year. After the first year, the claims can be filed by mail. The postponed taxes, plus interest at the rate of 6 percent per year, become a lien upon the property. The taxes become due and payable when the taxpayer dies or when the taxpayer disposes of the property or ceases to use the property as his principal place of residence.

SB 1108 is similar to SB 1202 of the 1967 legislative session with the following exceptions:

1. SB 1202 required the state to reimburse counties and revenue districts for property taxes lost by reason of the bill. The Legislative Analyst estimated that SB 1202 would require the expenditure of \$12 million in state funds.

2. SB 1202 was limited to persons (1) owning property having an assessed value of \$7,500 or less and (2) having an adjusted gross income of \$5,000 or less.

SB 1202 was passed by the Senate in 1967 and died in the Assembly Committee on Revenue and Taxation.

SB 1202 sought to provide property tax relief for what is often thought to be the most hard-pressed group of property taxpayers—aged persons with low, fixed incomes. The Assembly offered, as an alternative to SB 1202, the Senior Citizens Property Tax Assistance Law, which was enacted as part of the Governor's tax program of 1967, SB 556 (Deukmejian).

The Senior Citizens Property Tax Assistance Law reimburses persons 65 years of age or older for a portion of their property taxes. The amount of the reimbursement varies from 95 percent, for persons with a household income of \$1,000 or less, to 1 percent, for persons with a household income of \$3,350 or less.

In 1968, the Franchise Tax Board paid 54,518 claims for assistance under the Senior Citizens Property Tax Assistance Law. The total amount of property taxes paid by claimants was \$14,804,955 and the total amount of assistance paid by the state was \$7,450,926, or 50 percent of the taxes. The average claimant received \$137 in assistance.

By enacting the Senior Citizens Property Tax Assistance Law, the Legislature took action to grant property tax relief to that group of taxpayers that the Senate was trying to aid by passing SB 1202.

There is, however, one group of persons who might benefit from SB 1108 even though they do not qualify for assistance under the Senior Citizens Property Tax Assistance Law. That group of persons consists of persons with household incomes higher than \$3,350. Since SB 1108 contains no income or property limitations, the bill would permit per-

sons having income greater than \$3,350 to qualify for postponement of property taxes.

### ***Arguments in Favor of SB 1108***

1. SB 1108 offers a form of property tax relief to persons who do not qualify for assistance under the Senior Citizens Property Tax Assistance Law.

2. SB 1108 is relatively simple to administer because it does not require the tax collector to determine the wealth or income of applicants.

3. Requiring the taxpayer to pay interest on the postponed taxes would encourage only those in need of property tax relief to use the program.

### ***Arguments Against SB 1108***

1. The Legislature has enacted a program of property tax relief for the most hard-pressed and needy category of aged persons. SB 1108 would provide property tax relief for a less needy category of aged persons and would cost money. It would be better to use additional funds to liberalize the benefits of the existing program.

2. If the state does not reimburse local government for revenue losses, SB 1108 might cause fiscal hardship in areas with large retirement populations.

3. Since SB 1108 contains no income or property limitations, it offers property tax relief to persons who may not need such assistance.

4. Present interest rate levels are so high that SB 1108 might encourage persons who do not need property tax relief to postpone tax payments. This incentive will exist unless the 6-percent interest rate in SB 1108 is increased.

5. SB 1108 might encourage persons with a small equity to speculate on the theory that unpaid taxes plus interest will exceed the value of the equity.

### ***Conclusion***

Since the Legislature has enacted a program of property tax relief for retired persons living on low incomes, no new program should be enacted until the present program can be evaluated. The consideration of such measure as SB 1108 should be deferred until the Legislature has an opportunity to study and evaluate the consequences of the Senior Citizens Property Tax Assistance Law.

## VII. Sales and Use Tax: Exemption of Purchases by Interstate Transportation Businesses: AB 1349 (Veneman): Proposal for a Selected Business Expense Tax

AB 1349 would exempt California residents from paying a sales tax on trucks and trailers delivered in California if the vehicle is to be used in interstate commerce. AB 1349 is an extension of an existing exemption for trucks and trailers purchased by non-California residents for use outside of California.

The argument in favor of AB 1349 is that its enactment would increase manufacturing and retail sales in California. The proponents of the bill allege that purchasers of trucks and trailers request the manufacturer to make delivery outside California to avoid the California sales and use tax. The manufacturers allege that, to comply with this request, they shift the place of manufacture outside California. The proponents argue that, as a result of the enactment of the exemption in AB 1349, increased manufacturing and retail sales in California would cause a net revenue increase instead of a revenue decrease.

The State Department of Finance opposed AB 1349 on the grounds that it (1) dealt piecemeal with the problem of the application of the sales tax to interstate businesses, (2) would beget further exemptions, and (3) caused a revenue loss.

The State Board of Equalization opposed AB 1349 and filed the following statement:

As originally enacted, the provision in Section 6388 [of the Revenue and Taxation Code] applied only to house trailers. It was later amended to include trucks and dollies. The section was limited, however, to purchases by nonresidents for use outside California. The justification for this treatment was the potential double tax when California taxed the purchase and the nonresident's home state taxed the use. The extension of Section 6388 proposed by AB 1349 goes far beyond this situation. *As amended AB 1349 will not simply alleviate the problem of double taxation but will carve out an area which will not be subject to tax by any state.* A California resident purchasing a vehicle for use exclusively in interstate commerce will not be subject to tax in California and no other state will be able to impose its tax on the use of this equipment.

It should be noted that the double tax problem has been alleviated in a number of states, including California, by the allowance of a use tax credit for taxes paid other states. The credit mechanism eliminates the double tax problem while insuring at least one full tax is paid on each transaction. (Emphasis added.)

The Senate Committee on Revenue and Taxation refused passage of AB 1349.

New York is presently studying a selected business expense tax (SBET) to deal with problems in the application of the sales and use tax to interstate transportation businesses. The SBET substitutes for the sales and use tax a tax measured by business purchases that are comparable to purchases subject to the sales and use tax. The tax base would be a portion of purchases made both within and without New York. The portion allocated to New York would be an amount that represented business activity in New York as measured by property, payroll, and receipts.

The SBET attempts to resolve the problem to which AB 1349 addresses itself by making irrelevant the question of where a sale takes place. Taxpayers, moreover, might be encouraged to make purchases in a state having an SBET to avoid a sales tax in other states.

There are many theoretical and practical problems that must be resolved before an SBET can be enacted, and, at the present time, the Legislature needs only to be aware of the New York proposal.

Appendix B, page 34, of this report is a paper on the SBET by Lloyd E. Slater, Deputy Commissioner for Tax Research, New York State Department of Taxation and Finance.

## **Conclusion**

Before enacting further sales and use tax exemptions for interstate carriers, the Legislature should ascertain whether the alleged economic and fiscal advantages outweigh the fiscal disadvantages. The Legislature should follow the progress of the New York proposal regarding a selected business expense tax and, if it is enacted, evaluate its effects.



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## APPENDICES

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## Appendix A

### TESTIMONY AT A HEARING BEFORE THE ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

JANUARY 13, 1969

by

Ronald B. Welch

Assistant Executive Secretary, Property Taxes  
State Board of Equalization

Mr. Chairman and Members of the Committee :

In a letter dated November 12, you asked us a series of questions concerning the taxation of homes for the aging to which I will respond on behalf of the State Board of Equalization. In addition, we were asked orally about practices in other states, on which I will say a few words.

You first asked us about the assessed value of life care homes that are exempt from taxation under Section 214 of the Revenue and Taxation Code. The 1968 assessed value of the 199 California homes for the aging at 232 locations that we approved for exemption in 1968 was \$61,776,236. Approximately \$3,000,000 of assessed value of nonqualifying portions of these homes was taxable. There are also two homes with a gross assessed value of \$851,140 in Los Angeles and Orange Counties whose 1968 applications for exemption were still in process as of a recent date and for which we do not yet know the assessors' taxable and/or exempt values and one, with a gross assessed value of \$338,040, which we recommended for exemption but the county believes to be taxable. In brief, there was about \$60 million of exempt assessed value for homes for the aging as of the 1968 lien date. This is an increase of about \$10 million, or 20 percent, over the 1967 assessed value reported by the Department of Social Welfare. The 1967 assessed value amounted to \$2,900 per resident according to the department's report.

Only 43 of these homes at 56 locations were authorized by the Department of Social Welfare to issue life care contracts. Their 1968 gross assessed value was \$29,669,341, of which \$27,411,651 was granted exemption and the other \$2¼ million was taxed. A little under half of the assessed value of all homes for the aging was attributed to the life care homes.

The attached table sets out the details for each home.

You next ask whether we have any general recommendations to make for placing all or a part of that assessed value back on the tax rolls. On January 4, 1968, I appeared before you and advocated a plan by which the exemption of institutional homes for the aging would eventually be approximately equalized with the tax relief accorded noninsti-

tutional housing for the aged under the Senior Citizens Property Tax Assistance Law. The plan provided (1) for the total exemption of any portion of a home for the aging that is licensed as a hospital or convalescent hospital, (2) for the total exemption of the per capita share of the remaining value of a home of every person who is in the home at the time the plan is enacted, and (3) for the exemption of a fraction of the remainder that is inversely related to the average income of the residents of the home.

I illustrated the plan with the following example :

Table assessed value of home -----	\$1,750,000
Less assessed value of convalescent hospital -----	500,000
Balance -----	\$1,250,000
Capacity of home -----	450
Number of "grandfathers" * -----	50
"Grandfather" exemption : $1,250,000 \div 450 \times 50$	= 139,000
	1,111,000
Partial exemption for all other residents : $\$5,000 \times 400 \times .30 \dagger$ =	600,000
Taxable balance -----	\$511,000

\* Persons who were residents of the home on the effective date of the limitation and also on the lien date for the assessment year.

† Assumed average percentage from Section 19523 of the Revenue and Taxation Code, as added by Chapter 963, Statutes of 1967.

The Board of Equalization, on December 6, 1968, reaffirmed its approval of the general principles of this plan.

The board's proposal involves comparison of the incomes of residents of homes for the aging with the incomes of persons living in their own homes who are eligible for senior citizens property tax assistance. Before a fair comparison can be made, two adjustments must be made to the incomes of residents of homes for the aging.

First, the incomes of persons who have entered a home for the aging upon payment of a lump sum under a life care contract should be augmented by the annual income from the reserve account that the home is required to establish upon receiving the payment. Only by this means can homes authorized to issue life care contracts be placed on a parity with homes that charge only a monthly fee.

Second, the incomes of all residents of homes for the aging should be adjusted to reflect the fact that persons eligible for senior citizens property tax relief own their homes while those in homes for the aging do not. Those who are eligible for senior citizens property tax assistance do not have to use part of their incomes to pay rent on their homes as do the residents of homes for the aged.<sup>1</sup> Thus the former typically have larger percentages of their incomes with which to purchase goods and services other than housing. The adjustment needed cannot be closely calibrated, but I believe rough equality would be achieved by assuming that the income of a resident of a home for the aged needs to be about 20 percent higher than the income of a private homeowner to enjoy an equal standard of living. Another way

<sup>1</sup> Persons paying so-called "founder's fees" or other lump sum entry fees might be thought of as "owners" of their rooms or suites, but the imputed income from such "ownership" is represented by the annual income from their reserve accounts. Having added their income from reserve accounts to their cash income, as indicated in the preceding paragraph, we have placed these persons on a parity with those who have no equities in the home.

of putting this is that the table of tax remissions in the Senior Citizens Property Tax Assistance Law would be converted into a table of exemption percentages for homes for the aging which, for selected income levels, would look like this:

<i>If the income of the resident is not more than:</i>		<i>Percent of tax remission †</i>
<i>Senior citizens tax assistance</i>	<i>Homes for the aging *</i>	
\$1,000	\$1,200	95%
1,025	1,230	94
1,050	1,260	93
1,400	1,680	79
1,425	1,710	78
1,450	1,740	77
1,825	2,190	62
1,850	2,220	61
1,900	2,280	60
1,950	2,340	57
1,975	2,370	56
2,000	2,400	55
2,500	3,000	35
2,525	3,030	34
2,550	3,060	33
3,000	3,600	15
3,025	3,630	14
3,050	3,660	13
3,300	3,960	3
3,325	3,990	2
3,350	4,020	1

\* Including the annual income from a reserve account established by a home that has signed a life care contract and an allowance to offset the imputed homeownership income of senior citizens who own their homes.

† Computed as a percentage of the tax on the first \$5,000 of assessed value of homes in the case of senior citizens and as a percentage of the first \$5,000 of per capita assessed value in the case of residents of homes for the aging.

What effect this plan would have on any one home for the aging or on homes for the aging in general is not known, since there is no available information on the incomes of residents of the homes. We can offer some suppositions only. If every resident of a California home had an income equal to the maximum old age assistance payment for independent living, \$2,262 a year (\$188.50 a month),<sup>2</sup> the per capita income, the exemption would be 60 percent of the first \$5,000 of the per capita assessed value, or \$3,000 of assessed value per capita. Or, if every resident of a California home had an income equal to the average home's 1967 per capita income from residents and relatives (including the actuarial annual equivalent of entrance fees), \$1,724,<sup>3</sup> the exemption would be 77 percent of the first \$5,000 of the per capita assessed value, or \$3,850 of assessed value per capita.

We realize that these may represent the lower limits of average incomes of residents. We have no feel for the upper limits of average incomes. When we find that 1,500 people who were residing in Cali-

<sup>2</sup> This is the current rate and is \$4 a month higher than the rate in effect when the Department of Social Welfare filed in response to HR 517, 1967 session.

<sup>3</sup> *Ibid.*, Appendix VI.

fornia homes for the aging in May 1968 paid \$20,000 or more in entrance fees and 28 of these paid \$50,000 or more, we suspect that the average annual income of the residents in some homes run much higher than \$1,724 or \$2,262.

It is our impression that the State Board of Equalization's plan would exact a higher tax payment from homes for the aging than the various plans suggested in the Department of Social Welfare's response to HR 517, 1967 Session.<sup>4</sup> I am unable to ascertain from the Department's report what the tax payments by homes for the aging would be under the department's proposals, but it is my impression that they would be very small—possibly even minimal.

I might add that it is only natural that the State Board of Equalization would recommend a plan that would produce larger tax revenues from homes for the aging than the Department of Social Welfare's plans. The Social Welfare Department is interested in promoting homes for the aging since it finds much merit in community living and institutional care. The Board of Equalization is interested in equalizing tax burdens as between persons of like means, whether they live in their own homes or in homes for the aging.

Both the Social Welfare Department's plan and the Board of Equalization's plan contain automatic tax exemption escalation features. The department's plan would increase the exemption as the old age assistance grants increase. The board's plan would increase the exemption as the senior citizens property tax assistance grants increase. Both could be expected to respond to rising construction prices and rising consumer prices, though with differing degrees of alacrity.

We have heard very little discussion of the board's plan for exempting homes for the aging, but we suspect that there is one aspect of the version proposed a year ago which may have been unpalatable. We proposed at that time that persons entering a home for the aging after enactment of the plan agree to reveal their annual incomes to the manager of the home. We have no means of knowing whether such a prerequisite to entrance would deter any who need institutional living from applying for admission. We suspect, however, that home managers would think this is a real deterrent. The Legislature, we assume would be strongly influenced by the views of home managers. So we now propose that incomes be reported to the Franchise Tax Board. Of course, many residents would seek the manager's aid in preparing their reports, but any who wished to do so could report to the Franchise Tax Board without revealing their incomes to the home's manager. All the manager would need to do is assure himself that all residents have filed returns with the Franchise Tax Board and supply data on the actuarial annual equivalents of entrance fees. This he would accomplish by filing a list of all residents and the entrance fee computations for life care residents with the Franchise Tax Board so that the board could compute the average income for the residents of the home and certify to the county assessor the percentage of the home's assessed value that is entitled to exemption.

In summary, we believe that the plan we propose, by reason of its "grandfather" clause, would afford homes for the aging ample oppor-

<sup>4</sup> *Ibid.*



tunity to adjust their affairs to a new tax outlook, that it would effectively distinguish between luxury-type homes and homes that house persons of modest means, that it would encourage the admission of persons of limited means at reduced rates by all homes, and, above all, that it would create substantial equality as between elderly persons living in their own homes and those living in homes for the aging.

Your third question is partially answered by my description of the Board of Equalization's plan. You go on to ask our opinion of an in lieu or service charge approach versus a general ad valorem property tax. This is an area in which I have not consulted with the board itself. It is my personal opinion that the service charge approach, although in no sense offensive, is less readily integrated with our tax system than the general ad valorem tax. It would be more likely to generate requests for other special dispensation and to become outdated by changes in the economy. In some of its versions, it requires involved computations.

You ask what alternative formulas might be developed, and this question overwhelms me because the number of formulas that might be developed are probably infinite once we break away from the general property tax context. Perhaps those who have successfully frustrated this committee's repeated efforts to restore to the tax rolls some part of the assessed value of homes for the aging should be asked this question.

You next asked whether there is any reason for distinguishing between life care homes on the basis of admission and maintenance charges or other costs. We believe that any formula that is developed should be applicable both to the homes offering life care contracts and other homes for the aging. In general, the more opulent the home, the larger per capita tax payment it should make. The exemption of a flat amount of assessed value per capita would accomplish this purpose, as would the plan which we are advocating and the ones suggested by the Department of Social Welfare.

You next asked about minimal costs of homes that should not be taxed. Our plan would impose no tax liability on a home occupied entirely by persons receiving the minimum old age assistance grants (now \$1,482 a year), unless the accommodations were so lavish that the per capita full value exceeded \$17,000. The average home for the aging in California has a full value, according to the assessors' records, of \$12,000. The average income of the residents of a home worth \$12,000 per capita could be half again as high as the minimum old age assistance grant without subjecting the home to any property tax at all.

Your next question was whether some distinction should be made relating to the value and location of the land on which the home is built. A case can be made for discouraging the use of high-value land for homes for the aging by imposing taxes which are higher than they would be if the home were located on a less expensive site. But there are two sides to this coin; it can be argued that our senior citizens should not be uprooted from the communities in which they have lived useful lives and forced by economic circumstances to spend their retirement years far from their friends and relatives. In my opinion, the

weight of the argument favors the former view, and this is the one that is consistent with the Senior Citizens Property Tax Assistance Law.

Finally, you asked orally about the practices in other states. I have sent an inquiry to the other 49 states and by this morning had received answers from about two-thirds of them.

The 34 replies received to date disclose that the constitutional and statutory qualifications for property tax exemption of homes for the aged are much the same in most other states as they are in California. Homes for the aged are seldom specifically mentioned in the law. Properties used exclusively for charitable purposes are exempt if owned and operated by a nonprofit charitable organization. Exempt property must not produce gains, other than reasonable compensation for services, that inure to the benefit of stockholders, officers, or employees. Some states require that the property not yield a profit, but it is not always clear that this provision disqualifies a home that recovers a large part of the original construction cost from "founder's fees" paid by first- or first-and-second-generation occupants. In relatively few states is there state control over exemptions, and, where there is not, local authorities decide whether a property is taxable or exempt with occasional and usually incomplete guidance from the courts.

Thus far I have found only one state in which there is what might be thought of as a "formula" for taxing homes for the aged. In Maryland, a local governing body may enter into an agreement with a home that is financed to the extent of at least 95 percent by the federal government under Section 202 of the National Housing Act of 1959 for payment of a negotiated sum in lieu of taxes. The City of Baltimore has agreed upon a payment of 6 percent of the total rental value of all units in a project.

In the District of Columbia and the other states of the union from which I have had responses, a property that is used exclusively as a home for the aged is either totally exempt or totally taxable under the general property tax. The line between the totally exempt and the totally taxable may be drawn close to the taxable end of the spectrum or close to the exempt end. Illustrative of states where taxability is the norm are: Arizona, where only homes that are "for relief of the indigent or afflicted" are exempt; Colorado, where homes involving "material reciprocity between alleged recipients and their alleged donor" (i.e., equality of total charges and total costs) are taxable by a decision rendered last month; Missouri, where the State Tax Commission has held that charges to occupants disqualify a home for exemption; Ohio, where a full range of medical and personal care is required for exemption, and not more than 95 percent of the cost can be recovered from the residents; Oregon, where support by contributions from other than the home's occupants is prerequisite to exemption and bills that would liberalize this requirement have failed of passage; Utah, where the State Tax Commission believes that the law does not provide tax relief for housing for the aged and the commission anticipates court action as the result of a recent order to the authorities of Salt Lake County to place such a home on the tax rolls; and Virginia, where housing for the aged can qualify for exemption only if it is a hospital.



There are several states, other than those just mentioned, in which affluent homes are denied exemption. A recent decision of the New Jersey Division of Tax Appeals, from which an appeal to the state's Supreme Court is anticipated, holds such a home taxable. Nebraska and Texas have had supreme court decisions to the same effect. The Minnesota Supreme Court now has a case pending before it. In most other states, it appears to me that this question has not been settled either by court decision or by other rulings that are binding upon local taxing authorities.

## Appendix B

### A CASE STUDY IN EQUITY—THE PROPOSED NEW YORK TAX ON SELECTED EXPENDITURES OF TRANSPORTATION COMPANIES

Lloyd E. Slater

Deputy Commissioner for Tax Research

New York State Department of Taxation and Finance

(Remarks prepared for presentation at Annual Meeting of National Tax  
Association at San Francisco, California, September 2-6, 1968)

Mr. Chairman, fellow panelists, members and guests of the National Tax Association. My assignment on this panel is to illustrate the use of tax equity considerations in adjusting a state's tax structure to changing needs and conditions. For this purpose, I will briefly review a new tax concept developed by the New York State Tax Structure Study Committee.

This committee has proposed the substitution of a new tax on "*Selected Business Expenses*" for New York's present sales and use taxes on purchases used by some types of business. A bill incorporating this new concept was introduced as a study bill at the 1968 session of the New York State Legislature (S5244). This initial proposal applies only to transportation companies, but the same concept could eventually be extended to all types of business.

Before describing this new tax concept, it will be helpful to outline the particular inequities of New York's present tax structure for which solutions are sought. These inequities involve: (1) difficult compliance responsibilities and high compliance costs; (2) competition between conscientious taxpayers and those who evade their tax responsibilities; and (3) competition between taxable businesses and businesses outside the taxing jurisdiction. The inequities relating to each of these general groupings will be reviewed separately.

First, New York's present state and local sales and use taxes, like those in most other states, require suppliers selling to other businesses to collect a sales tax when the items sold are to be used in a taxable manner. The inequity of the burdens created by this requirement was emphasized repeatedly by the business representatives who testified before the Willis Subcommittee. As a result, that committee came to the following conclusion:

Under the present system, enforcement of the sales tax liabilities of local business consumers has been conducted at the expense of imposing considerable trouble upon their suppliers. The greatest complexity arises where the same goods may be taxable or not, depending on the use to which they are put by the buyer. This problem is characteristic of sales to such industries as manufacturing and contracting, where the buyers are both sellers of goods and consumers. The current rules have the effect of requiring sup-

pliers of such industries to predict what will be done with their goods—a requirement which is often both unreasonable and impractical.<sup>1</sup>

A tax structure is obviously inequitable if some businesses are faced with recordkeeping and reporting requirements that are unreasonable, impractical or unduly costly. Thus, in line with the above conclusion, the Willis Subcommittee recommended that, in the case of sales to other businesses, emphasis be shifted away from seller collection of sales and use taxes to direct payments by buyers.

Those suppliers who sell to transportation companies not only bear many of the sales tax burdens already mentioned but also encounter peculiar sales tax collection problems because of the somewhat uncertain constitutional limitations on the taxing of instruments of interstate commerce. This situation is further complicated because suppliers also encounter extreme differences among the states in the sales tax provisions applying to transportation companies.

In New York, we have concluded that the present tax inequities involved in collecting and reporting sales and use taxes can no longer be ignored, and that business efficiency should be protected by reducing to the bare minimum the expenses in collecting these taxes.

The second general area of tax inequity, which is being attacked by New York's proposed new tax, is the burden now borne by conscientious taxpayers who must compete with businesses that evade their tax responsibilities. It is generally recognized that the present uncertainty and confusion surrounding sales and use taxes on purchases intended for business use is not conducive to an acceptable level of tax compliance. Satisfactory figures are not available concerning the amount of revenue presently lost for this reason, but spot checks indicate that substantial amounts are involved. This problem is especially acute in the transportation field where mobile equipment is easily purchased and serviced outside the taxing jurisdiction and where evasion of the use tax is especially difficult to detect.

Improved enforcement of the present tax laws is, no doubt, possible; but an improved basis for taxing business purchases is also badly needed. Until the tax structure is made more equitable in this respect, some businesses must continue to absorb at least a portion of the taxes which would otherwise be passed on to customers, and all taxpayers must pay higher tax rates than would otherwise be required, just to offset the taxes that are evaded. This is one of the most serious kinds of tax inequity.

Another important group of tax inequities is created when merchants in a taxing jurisdiction lose sales to merchants outside the jurisdiction merely because of sales and use taxes. This group of inequities comprises the third category which the New York State Tax Structure Study Committee is attempting to mitigate. These inequities directly affect the merchants who lose some of their sales volume and thus suffer reduced incomes. In addition, other taxpayers bear the brunt of a resulting general reduction in business taxes and the sales tax revenue losses on purchases shifted outside the taxing jurisdiction. Although

<sup>1</sup> State Taxation of Interstate Commerce: Report of the Special Subcommittee on State Taxation of Interstate Commerce of the Committee on the Judiciary, House of Representatives Volume 4, June 1964, page 1185.

it may never be possible to entirely eliminate the effects of state and local taxes in changing purchasing patterns, tax improvements which will mitigate these effects should constantly be sought.

I turn now to a few of the details of the proposed new tax on "selected business expenses," and to the manner in which this tax would relieve the above inequities. This tax would be measured by categories of business expenses which represent in a general way the same type of expenditures now taxed under the sales and use tax. Purchases by the businesses subject to this new tax would then be exempt from the sales and use tax. The new tax would not affect present taxes on sales to individuals, and would apply initially only to specified types of business.

Although this new tax is proposed as a replacement for New York's present state and local sales and use taxes, it resembles a business income tax more than a sales and use tax. For example, annual expense figures, many of which are already available as a byproduct of the federal income tax computation, would be utilized in computing the new tax base.

As for an income tax, the computation of the new tax would involve the total activities of a business firm. The portion of a firm's total selected business expenses subject to tax in New York would then be determined by using an allocation formula with three factors (property, payroll, and receipts), patterned after the formula now used to determine the portion of a firm's net income that is taxable in New York. The Tax Commission would also be given the power to provide for a different allocation method in any instance where it appeared that the prescribed method did not fairly and properly reflect the portion of taxable expenses attributable to New York activities.

Quarterly tax payments, such as are required under the sales and use taxes, would still be required by the Tax Commission. However, the amounts paid quarterly would be estimated under a system of declarations similar to that now employed in connection with the state's business taxes based on net income.

The changes effected by this proposed new tax offer several important advantages:

Tax compliance and enforcement would be greatly simplified. Not only would suppliers of transportation companies no longer need to collect any sales or use tax from them, but many of the records that carriers are now required to keep could be eliminated. It would no longer be necessary, for example, for transportation companies to keep special records showing: (1) the locations where equipment, supplies, and services are purchased; (2) the points at which these purchases are delivered; (3) the first use of each item of property in New York; or (4) the nature of the first use in New York.

In addition, the continuing records now required to show when a transportation vehicle is initially used in performing an intrastate transportation service in New York could be eliminated. This record now serves a vital function because the New York sales and use tax does not exempt transportation equipment, and only vehicles used exclusively in interstate commerce are protected under the Federal Constitution from state and local sales and use taxes. Thus a vehicle now loses its immunity from taxation, and New York's use taxes become



due, whenever it is used even to a limited extent for intrastate transportation.

Not only would this new tax greatly simplify tax records and reports, but the self-enforcement features of New York's tax structure would also be strengthened by the use of information already compiled for the income tax. In effect this proposal puts each designated business taxpayer on a direct pay basis for sales and use taxes, and then simplifies the required tax records and reports without any weakening of tax enforcement procedures.

New York's business climate would also be improved. Merely reducing the tax compliance burden of suppliers and the records required of carriers would obviously have this result. Furthermore, under the selected business expenses tax, the amount of New York tax could no longer be reduced by making purchases in other states. Thus, one of the most harmful economic effects of New York's sales and use taxes would be eliminated.

Finally, the improvement in tax compliance due to simplified procedures under the proposed new tax would relieve the inequities of unfair competition associated with tax evasion, and at the same time reduce the amount of evaded taxes borne by conscientious taxpayers. Although the amount of recovered revenue cannot be accurately predicted, adoption of this new tax would undoubtedly increase both state and local sales tax revenue. The expected increase in purchases within New York by transportation companies would also increase the state's revenue from all kinds of taxes. Thus, this change, by increasing the yield of the existing tax structure, would be helpful in avoiding tax rate increases.

The principal complaint voiced thus far against this proposed new tax is that it could result in double taxation of the same purchases with some carriers having to pay either a sales tax or a substitute tax on more than 100 percent of their purchases. This possibility seems quite remote, however, since carriers with interstate operations are now able to pay sales taxes on much less than 100 percent of their purchases of taxable items. Furthermore, each transportation company would have an opportunity to avoid double taxation simply by adjusting the amounts purchased in different states.

It has been suggested by a few that this new tax would not be equitable because its incidence would differ from that of the sales and use tax which it replaces. This argument would be valid, though, only if the incidence of the sales and use tax on business purchases did in fact show a satisfactory degree of equity. I have already shown that this is not the case, and the principal advantages of the new tax is that its incidence does differ from that of the sales and use tax in ways which would make the New York tax structure both easier to comply with, and more equitable.

There is some danger that this proposal may encounter resistance merely because it represents a major change from established tax concepts. However, with continuing increases both in tax rates and in the proportion of interstate business, and with constant changes in business methods and practices, it is no longer possible to keep our tax structures equitable without considering and accepting new tax concepts.

In the time available it has been possible to enumerate only a few highlights of the proposed new tax on selected business expenses. However, copies of the study bill to establish this tax, and of a legislative memorandum explaining it, are included as appendices to this paper which will be available at the end of this session.

As with anything new, this tax proposal has not been presented as a perfected instrument. Possible problems have been minimized, though, by limiting the initial proposal to transportation companies. It is hoped that, with the aid of business representatives and others interested in taxation, any problems that exist can be resolved and that the study bill can be made ready for enactment at the 1969 legislative session. I look forward to receiving your comments and suggestions.

O







REPORT OF THE  
SENATE SOCIAL WELFARE SUBCOMMITTEE  
OF GENERAL RESEARCH

**A STUDY OF WELFARE EXPENDITURES  
(PUBLIC SOCIAL SERVICE)**

*Members of the Committee*

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**1969**

ED REINECKE

*President of the Senate*

HUGH M. BURNS

*President pro Tempore*

C. D. ALEXANDER

*Secretary*



Senate Chamber, State Capitol  
Sacramento, California

March 26, 1969

Mr. Ed Reinceke  
President of the Senate  
Senate Chamber, State Capitol  
Sacramento, California

Mr. President:

Pursuant to Senate Rules Committee Resolution 5, the Senate Social Welfare Subcommittee on General Research submits its report to the Legislature on A Study of Welfare Expenditures (Public Social Service).

The committee wishes to gratefully acknowledge the invaluable assistance given by the many public agencies who have placed at the committee's disposal information and published material which contributed immeasurably to the study.

Contract consultants, Arvo W. Schoen and Robert D. Decker, C.P.A., provided helpful preparation and analyses of the fiscal data.

Respectfully submitted,

MERVYN M. DYMALLY, *Chairman*  
ROBERT S. STEVENS, *Vice Chairman*  
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## I. INTRODUCTION

The 1968 Senate Committee on Social Welfare, in light of current trends in growing welfare expenditures and increasing public concern over these expenditures, undertook, beginning in August 1968, a study of the elements of cost associated with welfare (public social service) programs in California. This report summarizes the findings and conclusions of that study.

The purpose of the study was *to determine the adequacy of available program information to meet the requirements of the Legislature for budgetary and policy decision purposes, and to identify any trends which are likely to affect state expenditures in the future.*

To accomplish these objectives, the study encompassed all programs which come under the definition of *public social services* as stated in the State of California Welfare and Institutions Code, including program areas and specific programs presently administered outside the Department of Social Welfare. These programs were examined:

1. As to a) expenditures for administration, at both the state and local level, b) direct program costs, and c) the sources of funds for all expenditure categories.
2. As to the legislative intent which established these programs, federal and state requirements relative to their implementation, and statutory formulas for federal, state, and local governmental funding.

The purpose of this report is to portray the changes in public social services in California during the fiscal years 1963-64 through 1967-68 in terms of:

1. Identifiable expenditures of federal, state, and local funds incurred in the delivery of these services.
2. Changes in the scope and implementation of the corresponding legislation, statutes, and regulations of these service programs, to relate historical levels of expenditures with certain indices in order to establish possible ranges of expenditures over the next five fiscal years.

As the result of the study, an historical five-year data base has been established on the expenditures of funds by various identifiable cost categories on all of the applicable public social services programs, and a compilation of the pertinent legislative and regulatory information on each of the programs has been provided. All of this information has been compiled in this report to serve as a reference source for future legislative use.

The scope of the study effort and of this report is limited to the *public* programs in California. No *private* welfare, rehabilitative and training efforts and activities are included since they were not part of the committee charge. Furthermore, no attempt was made to collect



such information because it is not readily available in compiled form and, within the time allotted to the study, it would not have been possible to obtain in any degree of completeness.

The principal sources of information used in compiling the statistics and information were the respective state departments which administer the specific programs included in this report. Program statistics were obtained from the statistical and fiscal units within these departments. All of the information contained in Section V, Inventory of Programs, except the statistics, has been reviewed by the respective departments.

The state budgets were compared with the compiled departmental statistics in order to relate actual expenditures with budgeted expenditures. It can be stated that, in general, actual and budgeted expenditures compared favorably; however, the following factors were determined to be of consequence in such a comparison:

1. Because of the nature of the budgetary process and the limits imposed upon the preparation of each budget, actual expenditure statistics stated in the budget may contain from two to four months of estimated expenditures. Not all programs are included within the state budgets, specifically those in which only federal funds are involved and some of the federal programs which are funded directly to the local level without state involvement.
2. The format of the state budget has varied over the five-year period under examination so that comparable program cost elements are not always extractable from budgetary sources. In addition, without a clear understanding of the funding flow in the public social services programs, such as occurs between departments in cooperative programs, it is readily possible to duplicate expenditures, as they may appear in multiple places within the budget.

For these reasons, it was recognized that the information contained in the budget does not lend itself to the type of cost element analysis as envisioned by the committee; and, therefore, all basic program statistics were obtained from the respective departments. The budget was used for comparative purposes. However, where apparent differences arose, it was determined that different methods of expenditure allocations and distributions had been used. It was also determined that variations exist between departments in the allocation of expenditures as to cost elements. An extensive effort was made to bridge these differences and to attain as such comparability as was possible within the limits of available and identifiable information.

For purposes of statistical analysis, detailed expenditure statistics were compiled beginning with fiscal year 1963-64 through fiscal year 1967-68. The historical program statistics have been compiled separately in this report with the description of each program, and have been categorically and functionally summarized in Appendix A.

In order to determine the reasons for changes in program expenditures and/or changes in funding formulas, each program was examined in detail for legislative and/or administrative changes over the same five-year period. It was readily apparent that a statistical portrayal of

expenditures was incomplete without appropriate explanations regarding the changes which had occurred over the same time period. For that reason, each program was examined as to its legislative intent and as to major changes which had occurred since the time of its inception—particularly within the five-year period of this examination. The information has been compiled into an inventory of all programs included in this study and comprises Section V of this report. These program descriptions are *not* intended to portray all administrative and operational regulations associated with each program such as can be found in the administrative handbooks of the respective state departments responsible for their implementation. Rather, the program descriptions included with this report are intended only to portray the major historical changes in requirements, regulations, eligibility and benefits.

## II. SCOPE OF REPORT

### Definition of Terminology

The term "welfare" as commonly applied to the provision of public social welfare services, has been used in the past to denote a variety of concepts and meanings. A review of the current literature on the subject quickly reveals the absence of any standardized or generally accepted definition of the term "welfare" or "social welfare."

The usage of the term is generally not consistent and therefore is subject to differing interpretations as to the programs and services to be included under the rubric of welfare. For example, in its broadest sense the term is construed to include all public programs which provide a service beneficial to the general health and well being of any segment of the population unrelated to economic need or dependency. This interpretation, when applied to the organizational structure of the services provided by the State of California, would, with few exceptions, include all of the departments and programs administered by the Human Relations Agency.

The broad interpretation of welfare is illustrated in the "Definition of Terms" used by the U. S. Department of Health, Education and Welfare, Social Security Administration, Statistical Supplement, 1965.

### "Social Insurance

The public programs that provide income maintenance and other benefits without a means test and financed in general through prepayment arrangements. The term includes the following programs administered directly by the Federal Government: Old-age, survivors, disability, and health insurance (OASDHI); the railroad retirement program; and railroad unemployment and temporary disability insurance. It also covers unemployment insurance under the State laws (including the programs for Federal employees and for ex-servicemen), workmen's compensation, State temporary disability insurance, and public employee retirement systems (Federal, State, and local). Because they are closely related in purpose, the Federal programs for veterans that provide pensions, compensation, annuities, and burial awards are combined with social insurance programs in some of the tables.

### "Public Aid

Those welfare programs that provide money payments and services to needy individuals and families, financed from general revenues. These are primarily the federally aided categorical public assistance programs and general assistance (administered by the States and localities without Federal funds). The term also covers work relief, emergency aid, and surplus food distributions to needy families.

**"Social Welfare"**

The term includes, in addition to all the programs listed above, certain health, medical, and other welfare services under public programs, public education, and low-rent public housing programs. The health and medical programs included are hospital and medical care under civilian and Department of Defense programs, maternal and child health services, services for crippled children, medical research, school health, medical facilities construction, and other public health activities. The 'other' welfare services are vocational rehabilitation, institutional and other care, the school lunch program, child welfare services, and certain programs authorized under the Economic Opportunity Act."

Another broad interpretation of "welfare" is portrayed by Vaughn Bornet in his book, *California Social Welfare*, in which he identifies and describes social welfare services as including the following types of services:<sup>1</sup>

**"Services for Children"**

- A. Programs for Children in Their Own Homes
- B. Placement of Children in Foster and Boarding Homes
- C. Institutional Care of Children
- D. Unmarried Mother Programs
- E. Adoption Services
- F. Family and Child Counseling
- G. Material Assistance
- H. Homemaker or Housekeeper Services
- I. Well-Baby and Child Health Conferences
- J. Day Care and Nursery Services
- K. Other Services for Children

**"Services for Youth"**

- A. Group Work and Recreation
- B. Counseling and Guidance
- C. Housing Accommodations, Free or Part Pay
- D. Other Services for Youth

**"Health Services for Children and Adults"**

- A. Medical Services
- B. Research and Educational Programs Relating to Diseases
- C. Crippled Children and Adults Programs
- D. Mental Health Programs for Children and Adults
- E. Cerebral Palsied Children and Adults
- F. Infantile Paralysis
- G. Tuberculosis
- H. Services for the Chronically Ill
- I. Dental Services
- J. Schools and Programs for the Blind, Deaf and Hard of Hearing
- K. Rehabilitation for the Handicapped
- L. Other Health Services

<sup>1</sup> Vaughn Davis Bornet, *California Social Welfare*, Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1956.

“Services for Adults

- A. Material Assistance
- B. Services for Travelers, Migrants, and Immigrants
- C. Institutional Housing
- D. Counseling and Guidance
- E. Visiting and Rehabilitation Work in Institutions
- F. Legal Aid
- G. Services for Military Personnel and Veterans
- H. Disaster Relief
- I. Group Work and Recreation for Adults
- J. Other Services for Adults

“Services for the Aging

- A. Material Assistance
- B. Institutional Housing and Boarding Homes
- C. Group Work and Recreation
- D. Employment Services for the Aging.”

Such broad definitions, however, are more inclusive than that apparently envisioned by the California Legislature when it enacted certain provisions of the Welfare and Institutions Code. Therefore, for this legislative report appropriate provisions of the Welfare and Institutions Code were used as the major reference. The code, however, does not define “welfare,” but “public social services.” Division 9, Part 1, Chapter 2, Section 10051 states:

“‘Public Social Services’ means those activities and functions of state and local government administered or supervised by the department and involved in providing aid or services or both to those people of the state, who, because of their economic circumstances or social condition, are in need thereof and may benefit thereby.”

Section 19.1, General Provisions, and Division 9, Part 1, Chapter 1, Section 10001 state further:

“The purposes of the public social services for which state grants-in-aid are made to counties are:

(a) To provide on behalf of the general public, and within the limits of public resources, reasonable support and maintenance for needy and dependent families and persons.

(b) To provide timely and appropriate services to assist individuals develop or use whatever capacity they can maintain or achieve for self-care or self-support.

(c) To provide protective services to handicapped or deprived persons subject to social or legal disability, and to children and others subject to exploitation jeopardizing their present or future health, opportunity for normal development, or capacity for independence.”

Although the definitions contained in the W & I Code provide a reasonable basis for determining the types of programs and services to be included in a report on welfare costs, they contain limiting features which would put unreasonable constraints upon the usefulness of such a report.



One limiting feature is the reference to “. . . those activities and functions of state and local government administered or supervised by the department . . .” (i.e., Department of Social Welfare) in Section 10051. If the report were limited only to those programs administered or supervised by the Department of Social Welfare, many training and protective service programs, administered by other departments but similar in intent and purpose to those administered by the Department of Social Welfare, would have to be excluded. Therefore, a realistic portrayal of the spectrum of social services conceived for and directed toward the economically needy would not be achieved.

Another phrase which places a limitation on the scope of the report is “. . . public social services for which state grants-in-aid are made to counties . . .” Although the purpose of these grants-in-aid is as stated, public social services are not limited to those programs for which such grants are made.

After deleting these limiting features and combining the notable provisions of the two sections, a consistent, functional definition of public social services was derived. This definition was then used as the primary criteria for determining whether or not any particular program, *based on its intent or purpose*, was to be included or excluded from this report.

The definition of public social services used for this report is as follows:

Public Social Services are those activities and functions of state and local government administered, supervised or subject to review by a state agency, the purpose of which is:

(a) To provide on behalf of the general public and within the limits of public resources, reasonable support and maintenance for *economically* needy and dependent families and persons.

(b) To provide timely and appropriate services to assist *economically* needy families and individuals develop or use whatever capacity they can maintain or achieve for self-care or self-support.

(c) To provide protective services to handicapped or deprived persons subject to social or legal disability and to children and others subject to exploitation jeopardizing their present or future health, opportunity for normal development, or capacity for independence.

### **Rationale For Program Inclusion:**

The use of certain terms in the definition and the organization of the program functions included within the scope of this report demand further clarifying statements:

1. Since this is a legislative report, the scope was limited to those programs in which there was some degree of involvement on the part of state agencies. Therefore, similar programs directed solely by federal and local governmental agencies and private agencies were not included, such as social security, Medicare, housing and urban development, and veterans' programs.
2. In a few instances federal programs and funds are directed partially through a state agency and partially through local agencies. In each program where this occurs, the total amount

- of federal funds expended in the state, *i.e.* through any source, was obtained from federal agencies.
3. In order to assure a comprehensive portrayal of welfare costs, programs which provide services to low-income or economically disadvantaged persons, as well as dependent persons, were included in the study. The rationale for this position was: (a) welfare program costs include not only subsistence and training costs attributed to public assistance recipients, but also costs of similar services provided to other economically disadvantaged persons. Low income and economically disadvantaged persons are *potential* public assistance recipients (economically needy) if one assumes that without certain services they would **require** public assistance. (b) In programs where welfare recipients and non-recipients are both served, expenditure and enrollment data for recipients are generally not separable from the total program data. Therefore, one criterion for including any particular program in this report was if the *primary* purpose of a program is to provide support and/or training services to economically disadvantaged persons regardless of source of income, *i.e.* not just public assistance recipients.
  4. Training and rehabilitation programs were included in the study if their *primary* purpose was to provide remedial training to assist economically disadvantaged persons achieve self-support by putting them in a state of *job readiness acceptable by employers*.

In summary, the scope of this report and the criteria for the inclusion or exclusion of a program are as follows:

1. The program is wholly or partially administered, supervised or subject to review by a state agency, and
2. The *primary* purpose of the program is to provide any or all of the following functions: (a) support and maintenance for economically needy and dependent families and persons, (b) training or rehabilitation services for economically needy and dependent families and persons directed toward assisting them to achieve self-care or self-support, or (c) protective services to handicapped or deprived persons subject to social or legal disability, and to children subject to exploitation which would jeopardize their present or future health or opportunity for normal development, or capacity for independence.

A review of the programs which met the criteria described above resulted in the inclusion of 27 programs in nine agencies. With the definition and criteria as a guide, these programs were further separated into three categories based on their purpose:

- a. Support and maintenance,
- b. Training or rehabilitation to achieve self-care or self-support,
- c. Protective services to handicapped or deprived persons and to children subject to exploitation, which promote future health and opportunity for normal development, or capacity for independence.

The nine agencies and 27 programs are listed below to illustrate into which of the three categories of social service programs each was placed for purpose of analysis:



Agency and program	Purpose of program	Definitional category
<b>Department of Social Welfare</b>		
General Relief.....	Provide support for all incompetent persons and those incapacitated by age, disease or accident	a. Support and maintenance
Old Age Security.....	Provide supplemental income and other services to needy persons 65 years of age and older	a. Support and maintenance
Aid to the Blind and Aid to the Potentially Self-Supporting Blind	Provide financial assistance to persons who because of loss or impairment of eyesight cannot fully provide for themselves	a. Support and maintenance
Aid to the Needy Disabled.....	Provide financial aid and social services to needy disabled persons 18 years of age and older	a. Support and maintenance
Aid to Families with Dependent Children	Provide financial aid and social services to children who lack financial support and care	a. Support and maintenance
Cuban Refugee Program.....	Provide benefits to Cuban refugees until they become self-supporting or return to Cuba	a. Support and maintenance
Temporary Assistance for Repatriated Citizens	Provide financial aid and medical assistance to U.S. citizens returned from foreign countries because of mental illness, financial destitution or other severe personal problems	a. Support and maintenance
Food Stamp Program.....	Provide increased purchasing power for low-income families or individuals through the purchase of food stamps at a discount	a. Support and maintenance
Family and Children Services and Adoptions	Provide social services to protect or promote the welfare of children as a supplement to or substitute for parental care and supervision	c. Protective services
Day Care Services.....	Provide direct care and protection of children outside their own homes for a portion of the day	c. Protective services
Protective Services for the Mentally Handicapped	Facilitate the return of patients in state mental hospitals to the community and prevent unnecessary commitments of mentally handicapped persons	c. Protective services
Special Social Services.....	Provide training and study projects to increase efficiency of administration and services	a. Support and maintenance (administration)
<b>Department of Health Care Services</b>		
The California Medical Assistance Program	Afford basic health care and related services to those aged, family, and other persons who have insufficient income to meet the cost of health care	a. Support and maintenance
<b>Department of Rehabilitation</b>		
Vocational Rehabilitation Programs... —vocational guidance and placement —cooperative programs —special rehabilitation of the blind	Provide services to help disabled adults overcome their handicaps and secure employment	b. Training or rehabilitation
<b>Department of Public Health</b>		
Maternal and Child Health.....	Assist children and their mothers by providing health measures which promote physical, mental and social well-being and prevent ill health of mothers and children	c. Protective services
Crippled Children Services.....	Physical habilitation or rehabilitation for children under 21 years of age with specified handicapping conditions whose families are unable to pay for these services	c. Protective services
<b>Department of Education</b>		
School Lunch Program.....	Safeguard the health and well-being of children and encourage domestic consumption of agricultural commodities	a. Support and maintenance
Surplus Food Program.....	Prevent the waste of commodities and permit their donation for relief purposes	a. Support and maintenance
The Preschool Education Program.....	Provide equal educational opportunity to children of low-income or disadvantaged children	c. Protective services
Children's Centers.....	Provide supervision and instruction for children of employed mothers and for children of parents in public assistance programs and other families who might become dependent	c. Protective services
Compensatory Education Projects.....	Provide financial assistance to local educational agencies to expand and improve educational programs to meet the special needs of educationally deprived children	c. Protective services
MDTA—Institutional.....	(See Manpower Development and Training Act Programs, Dept. of Employment)	b. Training or rehabilitation
Adult Basic Education.....	Encourage and expand basic education programs for adults	b. Training or rehabilitation

Department of Employment Manpower Development and Training Act Program	Provide instructional and/or on-the-job training to unemployed and underemployed persons	b. Training or rehabilitation
Human Resources Development Concept	Provide a functional approach to develop the skills of the unemployed and underemployed, to create opportunities for employment, and place applicants in jobs	b. Training or rehabilitation
Work Incentive Program-----	Provide employment or training for potentially self-supporting persons receiving Aid to Families with Dependent Children	b. Training or rehabilitation
Department of Industrial Relations MDTA—On-the-Job Training-----	(See Manpower Development and Training Act Programs, Department of Employment)	b. Training or rehabilitation
Service Center Program Service Center Program-----	Bring together at a centralized location within a particular area, all resources which meet the problems of disadvantaged persons	b. Training or rehabilitation
Economic Opportunity Act Programs (Federal) Title I—Job Corps, Neighborhood Youth Corps Title II—CAP (Selected) Title III-B—Migrant Title V—Work Experience	Eliminate poverty by providing an opportunity for education, training, and employment and to live in decency and dignity	a., b., c. Depending on program functions

### Rationale for Program Exclusions

Many programs reviewed during the preparation of this report are excluded because their *primary* purpose or intent does not meet the criteria of the definition of Public Social Services stated in the previous section. Programs are excluded for one or more of the following reasons:

1. The federal government initiated and administers the program with *no state involvement*.
2. The program is principally financed through prepayment arrangements, and benefits are provided *without a means test*.
3. The *primary intent* of the program is directed toward a purpose other than that stated in the definition, although the program functions may result in providing services similar to programs included in this report.
4. The purpose of the program is protection of the general public against irregular practices through standard-setting and enforcement functions. This type of service, although generally considered to be protective in nature, is not rendered directly to an individual.
5. Services provided through the program are available to or directed toward the general population, and *do not specifically focus* upon the economically needy or dependent.

The programs excluded from this report and the reasons for exclusion are given below.

### Federal Programs

1. The Department of Health, Education and Welfare describes social insurance programs as old-age survivors, disability, and health insurance programs (social security and Medicare), the railroad retire-

ment program, the railroad unemployment and temporary disability program and the federal programs for veterans. These programs are excluded because they (a) are administered directly by the federal government, (b) provide benefits without a means test, and (c) in general, are financed through prepayment arrangements.

2. Programs administered by the U. S. Department of Housing and Urban Development (HUD) which would otherwise meet the study criteria are not included, as there is no state agency involvement in these programs. Local agencies apply directly to HUD for financial assistance, and approved funds are passed directly to the applicant. The State Department of Housing and Community Development has no direct involvement in the HUD programs. Its relationship to those programs is to provide information and technical assistance to local and federal agencies who request its services.

3. Selected programs administered by the Office of Economic Opportunity are excluded only if they do not meet the criteria set forth in the definition. Therefore, VISTA (Volunteers in Service to America), the Work Study program (which provides part-time jobs for needy college students), the Rural Loans program, and the Small Business Loans program are not included. The numerous programs funded under the Community Action Programs (CAP's) were reviewed individually to determine if they met the criteria for inclusion. Programs which do *not* include services directed toward providing (a) support or medical services, (b) training or rehabilitation services, or (c) protective services are excluded. Therefore, programs or funding categories which specifically provide for administrative services, planning, program development, staff training, technical assistance, research, recreation or cultural enrichment, community organization, or consumer action are not included in the cost or descriptive material relating to the Community Action Programs.

### State Programs

1. Social insurance programs administered by the state, such as Unemployment Insurance, Workmen's Compensation, and Disability Insurance, are excluded as they are financed through prepayment arrangements and are administered without a means test.

2. Although Department of Employment administered training programs, directed toward the unemployed, underemployed or disadvantaged persons, are included in the report, the regular employment services are not. The objectives of the California State Employment Service and the Farm Labor Service are "... to assist in the prompt employment of persons seeking work, and to help employers obtain qualified workers . . ." <sup>2</sup> These objectives are much broader than the definitional criteria of assisting economically needy and dependent persons to achieve self-support.

3. The Youth Opportunity Centers (YOC's) which provide youth (particularly disadvantaged youth) with preparation for employment, development of job opportunities, and placement in suitable jobs, would ordinarily be included in a study of welfare. However, the program had

<sup>2</sup> State of California: *Support and Local Assistance Budget for the Fiscal year July 1, 1968 to June 30, 1969*, submitted by Ronald Reagan, Governor, to the California Legislature, 1968 Regular Session, page 523.

to be excluded as the YOC services are provided as part of the Employment Service program, and furthermore, the enrollment and the fiscal data are inseparable from that program.

4. Education programs are excluded unless specifically designed to provide special services to disadvantaged persons, *i.e.*, unemployed or underemployed parents and their children.

5. The Schools for the Deaf, Schools for the Blind and the Diagnostic Schools for the Neurologically Handicapped Children are educational programs designed to provide the special schooling required by the handicapped. Although these schools provide support and protective services, they are excluded from this report since their *primary* function is education and all other services are ancillary.

6. The program of vocational education "... is designed to serve the needs of three distinct groups of people: Those who are preparing for initial employment, those who are already employed but who have need for higher skill levels, and those who are unemployed."<sup>3</sup> The first two groups would be excluded as they do not meet the definition of remedial training for employability. The third group—those persons who are unemployed—would meet the definitional criteria. However, a report on the total enrollments in the vocational education programs for fiscal year ending June 30, 1967 shows that only about 8 percent of the enrollees were adults with special needs or in preparatory education.<sup>4</sup> This is a comparatively small percentage of the total enrollees and since program costs for these services cannot be separated from the total program costs, the entire program is excluded from this report.

7. The correctional and delinquency prevention programs or the Department of Corrections and the Department of the California Youth Authority are excluded on the basis that the intent of these programs is the rehabilitation of persons who have been apprehended under the criminal laws of this state, or due to their delinquent conduct, under Sections 601 or 602 of the Welfare and Institutions Code. Although support and rehabilitative services are provided to persons who are economically needy, either prior to or as a result of incarceration, the program is directed toward the person as a felon, nonfelon addict, or delinquent.

8. Children who have been adjudged dependent children of the court under Section 600 of the Welfare and Institutions Code and who have been placed in protective custody are not identified under a separate program. Those children who have been placed under a county probation program are not included in this report; however, those children who have been placed under a welfare program are included in the AFDC or Family and Children Services programs.

9. Department of Public Health programs, except for Maternal and Child Health and Crippled Children's Services, are excluded as the mission of these programs "... is to secure a healthful life for all Californians . . ."<sup>5</sup> This is a much broader objective than providing medical support services to economically needy and dependent persons.

<sup>3</sup> *Op. Cit.*, page 267.

<sup>4</sup> Department of Health, Education and Welfare, Office of Education, Form OE 4048 (Rev. 2/67), California Enrollments in Vocational Education Programs, Fiscal year ending June 30, 1967.

<sup>5</sup> *Ibid.*, page 639.



10. Programs administered by the Department of Mental Hygiene are excluded as their objective is the care and treatment of the mentally ill and mentally retarded. Although subsistence and medical services are provided, they are necessitated by the individual's need for care and treatment *due to mental illness or retardation*, not economic need.

11. The California Commission on Aging and Title III (Community Grants) of the Older Americans Act, administered by the Commission, are excluded from this report on the basis that their purpose is not directed toward providing support, training or protective services. "The Commission on Aging is charged with the responsibility of advising the Governor on action necessary to meet the needs and solve the problems of all senior Californians; to encourage sound action and to provide consultation to local communities in developing comprehensive programs, services and opportunities for the well-being of senior Californians; to develop an effective and coordinated use of state resources on behalf of the aged and to act as a clearing house and information center for all organizations . . ." <sup>6</sup> The funds allocated under the Older Americans Act include "Projects in preretirement; information, referral and counseling services; volunteer training, and paid community services; development and expansion of senior multi-purpose centers, and long-range community planning." <sup>7</sup>

12. The purpose of the Division of Industrial Welfare is ". . . the promulgation and enforcement of standards for minimum wages, maximum hours of employment and basic working conditions for employed women and minors to ensure that labor conditions detrimental to the health, efficiency and welfare of California's . . . women and minor wage earners are eliminated." <sup>8</sup> Although the program provides services for the protection of employed women and minors, the functions are primarily standard-setting and enforcement to prevent irregular practices; therefore, the program is not included in this report.

13. The Division of Disability Determination in the Department of Rehabilitation is excluded as it ". . . is operated under a contract between the state and federal government and is supported entirely with federal funds." <sup>9</sup> The function of the division is to evaluate and determine disability on all social security disability claims filed in the state. Since the federal social security program is excluded, it was concluded that this element of the program must also be excluded.

14. The licensing program in the Department of Social Welfare (and similar programs in the Departments of Public Health and Mental Hygiene) is excluded on the basis that the program is designed to provide assurance to the public that agencies and facilities offering specialized services have met standards compatible with the needs and circumstances of the persons being served and to protect the public against irregular practices. This service, although protective in nature, is considerably broader than the criteria for protective services stated in the definition of the scope of this report.

<sup>6</sup> *Ibid.*, page 598.

<sup>7</sup> *Ibid.*, page 598.

<sup>8</sup> *Ibid.*, page 730.

<sup>9</sup> *Ibid.*, page 693.

### III. CONCLUSIONS AND RECOMMENDATIONS

#### Conclusions

As the result of the committee's examination of welfare (public social service) programs, both in terms of expenditures and the types of services being provided under the programs included under the scope of the study, the committee concludes:

1. The state is heavily dependent upon federal funds in providing the services authorized under the various welfare (public social service) programs, and concomitantly must comply with federal legislation and regulations as administered by the responsible federal agencies.

The result of this federal dependency is that little or no latitude is provided to the state Legislature in policy determination, and it may therefore only deal in enabling legislation or in areas not covered by federal requirements. Administrative organization at the state level may also be determined by the federal agency as part of the federal requirements for implementation of a program. Existing programs, in whole or in part, are transferred or assigned between state departments, in order to maximize federal reimbursement.

2. When programs designed to provide similar types of services or designed to provide services to the same population segment, and administrated by different departments, are examined, variations in the descriptive statistical elements results in incompatibility of information for comparative purposes.

Similar titles may be used to describe expenditures; however, variations exist in the application of the prescribed accounting system. For instance, some departments allocate their administrative cost to programs based on the level of dollar expenditures, while other departments allocate their administrative expenditures based on time studies. In other departments no attempt is made to allocate departmental administration cost to its various programs. This results in considerable incompatibility when administrative expenditures of the departments are combined for analysis.

It is not possible to make an unduplicated count for a particular fiscal year of *all* the participants in the programs encompassed within this report. In order to make such a count, it would be necessary, at the present time, to examine the case file of each individual participant in all of the departments providing services. The reason for this situation is that the measurement of service is by *case* and not by individuals served. An individual may terminate the services provided in a program and later re-enter the same program, be counted as a new case, with no statistical recognition that the services are provided to a single individual. This situation is compounded by the fact that the same individual may receive services under a number of different programs and be counted as a case statistic in each.

Based upon the published statistics, readily available to the Legislature, it is not possible to determine the degree of effectiveness of services provided, particularly those services designed to reduce dependency. This is due to the fact that generally available statistics do not contain the spectrum of characteristics and factors associated with the individual participant, those which describe the changes occurring to the participant during the time of service and which describe all of the conditions associated with the termination or completion of service(s). This type of characterization of service impact upon the individual is not included in summary statistics used for budgetary or reimbursement purposes.

3. Long-range projections, using generally accepted procedures, are subject to many uncontrollable factors.

Expenditure projections beyond a budget year are characterized by a high degree of uncertainty because of the demonstrated fluidity in existing programs and the changes in rate of new program initiation. It is also necessary to anticipate with some degree of certainty the attitude and actions of Congress concerning changes in funding relationships in existing programs and the potential for authorization of new programs. Further, it is necessary to assume a certain degree of effectiveness about the achievement of existing programs, particularly the programs designed to reduce dependency. Since these factors are not controllable by the state and all controllable factors are not measured, practical budgetary projections for the following budget year are based upon the historical growth rate of a particular program and upon the anticipated levels of funding resources as related to the previous budget year. To date, very few projections and long-range program plans have been based upon the identified total and specialized need for services and compared to the *available* anticipated general resources which may be expended toward meeting that need. Further, welfare (public social service) programs have no stated goal or commitment which can be used as a measure of progress.

4. Many types of services are duplicated in welfare (public social service) programs administered in different agencies and departments.

In comparing the individual programs, it is readily apparent that services such as subsistence, medical care, training and day care are provided by a number of programs in different agencies and departments. Expenditures for subsistence can be identified as a cost element in a number of programs in each of the three definitional program categories adopted for this report. An even larger number of programs provide medical and health care services apart from the services for which they are primarily designed. In addition to duplication of services in the state-administrated programs, federal programs under the Economic Opportunity Act further duplicate the existing structure of welfare (public social service) programs in the state, under one federal administrative unit.

## Recommendations

Based upon the committee's conclusions concerning federal dependency, incompatibility of information, difficulties encountered in making



long-range projections and forecasts, and the problems associated with coordination in the provision of services to avoid duplication, the committee *RECOMMENDS* that studies be undertaken on a continuing basis to analyze these problems in depth in order to arrive at workable plans which can be feasibly implemented in California.

While the study which resulted in this report dealt primarily with expenditure and revenue sources, an inventory of welfare (public social service) programs has been compiled in relation to the major legislative and regulatory changes which have occurred during the existence of each program. This inventory, combined with the fiscal statistics can serve as a valuable reference source to the Legislature in the future. Therefore, the committee *RECOMMENDS* that the inventory section of this report be annually updated in terms of actual expenditures incurred, revenue sources, and major legislative and regulatory changes enacted, and be submitted to the Legislature on an annual basis as a reference document on welfare (public social service) programs.

#### IV. SUMMARY OF FINDINGS

The individual program statistics, which are shown in the next section of this report with the respective program descriptions, have been compiled for a statistical analysis of expenditures by fiscal year, according to the identifiable cost elements and according to program groupings as related to the three definitional categories of welfare (public social services) programs as adopted for this report. Appendix A contains the detailed summaries of the grouped statistics by cost element within each program category and by sources of funds by fiscal year.

Statistics on participant counts are provided with the individual program statistics, however, a compilation and summary of participants for all programs by fiscal year is not possible, because (1) there is limited compatability between programs as to type of participant identified, and (2) an unduplicated participant count is not possible since a single participant may be enrolled in several programs simultaneously or may be receiving a number of services in the same program. Therefore, a participant count is only useful in dealing with the individual program.

##### **Program Expenditures from Fiscal Year 1963-64 to Fiscal Year 1967-68 by Cost Element**

Total program expenditures have substantially increased during the period from fiscal year 1963-64 through 1967-68. Over this five year period, total expenditures increased from \$921 million to \$2,297 million, representing a 149.3 percent increase over the base year (see Figure 1). The major factors accounting for this increase in expenditure rate were the implementation of new programs under the Economic Opportunity Act and the increased scope of medical services and programs. Coupled with new programs, the increase was further influenced by increased caseloads, increases in benefits and services due to cost-of-living adjustments, and increased emphasis on work and training programs.

There has also been a shift in the distribution of identifiable expenditures by cost elements and by type of services provided. Total administrative expenditures increased from \$102 million in fiscal year 1963-64 to \$242 million in fiscal year 1967-68, which represents a 137.2 percent increase in dollar volume during the five-year period over the base year.

Total direct program costs, as can be identified from expenditure statistics, increased from \$819 million in fiscal year 1963-64 to \$2,056 million through fiscal year 1967-68, which represents a change from 88.9 percent to 89.5 percent of the total expenditures over the same period of time, and 150.9 percent increase in dollar volume during the five-year period over the base year.

Expenditures for subsistence and maintenance, including transportation, increased from \$623 million to \$1,067 million between fiscal years 1963-64 and 1967-68. This constitutes a change from 76.1 percent to 51.9 percent of the direct program costs between the same fiscal years.

At the same time the expenditures for subsistence and maintenance increased in dollar volume by 71.2 percent during the five year period.

Total expenditures for health care services increased from \$168 million in fiscal year 1963-64 to \$720 million through fiscal year 1967-68, which represents an increase in dollar volume of 328.9 percent during this period of time. Related to the direct program costs, health care services increased from 20.5 percent to 35.0 percent during the five fiscal years.

Appendix A shows increases in other cost elements, *i.e.*, placement and training, instruction, support in training, and case services costs. The identifiable statistics, however, do not fully portray the total expenditures for these cost elements during the five-year period because placement and training costs and case services costs were included until fiscal year 1967-68 within administrative costs and the subsistence/maintenance expenditures of the categorical aid programs. Therefore, these costs were not separably identifiable as distinct expenditure elements. The percentage distribution changes and the total expenditures as shown in Figure 1, therefore, do not precisely reflect the actual expenditures for these cost elements.

### **Sources of Funds for Program Expenditures by Cost Elements**

Federal funds for total expenditures increased from \$404 million in fiscal year 1963-64 to \$1,172 million through fiscal year 1967-68, representing an increase of 190 percent during the five-year period (see Figure 2).

As a percentage of the total expenditures, federal funds changed from 43.9 percent to 51.0 percent from the first to the fifth year. Federal funds expended as administrative expenditures increased from \$51 million to \$138 million during the five fiscal years included in this report, and changed in proportion to the total administrative expenditures from 49.9 percent to 57.4 percent during the same period of time. Federal funds applied to direct program costs changed in dollar volume from \$353 million in the first fiscal year to \$1,033 million by the fifth fiscal year, representing an increase of 192.6 percent in dollar volume over the first year. In proportion to the total direct program costs, federal funds changed from 43.1 percent to 50.3 percent during the same five fiscal years.

State funds for total program expenditures increased from \$342 million to \$669 million from fiscal year 1963-64 through fiscal year 1967-68, representing an increase of 95.9 percent in dollar volume during the five fiscal years. State funds for administrative expenditures increased from \$12 million to \$31 million during the same period of time, and changed in proportion to the total administrative expenditures from 11.6 percent to 13.0 percent for the respective years, while increasing in dollar volume by 180 percent during the five years.

State funds for direct program costs increased from \$330 million to \$638 million in these five fiscal years, representing an increase of 93.3 percent in dollar volume. In proportion to the total direct program costs, state funds changed from 40.3 percent to 31.0 percent in the same period of time. State funds for subsistence and maintenance, including transportation, increased in dollar volume by 50.7 percent

in the five years, \$263 million to \$398 million, but changed in proportion to the total subsistence maintenance expenditures from 42.3 percent to 37.3 percent.

The change in the proportional distribution of funding is primarily attributable to the enactment of the Economic Opportunity Act in 1964, which resulted in the implementation of a number of new programs in fiscal year 1965-66, primarily funded with federal funds. Federal funding of the support and maintenance programs also increased, due to a revision of the funding formulas which resulted from the implementation of the medical assistance program in 1966.

In relation to total expenditures, county and local funds have proportionately remained constant over the five-year period, with the only exception being county and local funds as part of the total administrative expenditures. County and local funds proportionately changed from 38.5 percent to 29.6 percent of the total administrative expenditures, while in dollar volume the funds expended increased from \$39 million to \$71 million, or an increase of 82 percent in dollar volume by the fifth year.

County costs have remained relatively constant during the period from 1963-64 through 1967-68 due to the fact that county cost participation, in most instances, is based on a fixed percentage of the required expenditures. Also, no new programs of major expenditure significance were initiated at the local governmental level during this period.

### **Expenditures and Sources of Funds by Definitional Program Categories**

As previously discussed, welfare (public social service) programs have been divided for the purpose of this report into three functional categories, which are:

1. Subsistence and maintenance programs
2. Training/rehabilitation programs
3. Protective services programs

Figure 3 portrays the total dollar expenditures, previously discussed as to program cost elements, in terms of these program categories. The relationship between program categories becomes evident when the distribution of sources of funds for each of the categories is examined.

In terms of total program expenditures (see Table 1) federal funds have increased from 43.9 percent to 51.0 percent over the five-year period, while state funds decreased from 37.1 percent to 29.2 percent.

The increase in federal funding for subsistence/maintenance programs, with the corresponding decrease in state funding, is due primarily to the revision of funding formulas resulting from the enactment of the medical assistance program in 1966. The increase of county funding in this program category in fiscal years 1966-67 and 1967-68 is a direct result of the requirement for reporting county expenditures for health care services under the medical assistance program, which in prior years were not reported to the state.

The category of training/rehabilitation programs has seen an increase from \$16 million in fiscal year 1963-64 to \$149 million by 1967-68 of both federal and state funds. Federal funds increased over that same period of time from \$12 million to \$139 million, while state funds



Table 1.

Percentage Distribution of Funding Sources for Expenditures by Program Categories

	Fiscal Years				
	1963-64 (percent)	1964-65 (percent)	1965-66 (percent)	1966-67 (percent)	1967-68 (percent)
<b>Total program expenditures</b>					
Federal.....	43.9	45.2	50.1	50.8	51.0
State.....	37.1	36.5	32.5	29.8	29.2
County/local.....	19.0	18.3	17.4	19.4	19.8
<b>Subsistence/maintenance programs</b>					
Federal.....	45.4	45.4	45.8	45.8	46.3
State.....	35.6	35.8	34.7	32.2	31.1
County/local.....	19.0	18.8	19.5	22.0	22.6
<b>Training/rehabilitation programs</b>					
Federal.....	74.6	88.0	94.9	93.5	93.4
State.....	25.4	12.0	5.1	6.5	6.6
County/local.....	---	---	---	---	---
<b>Protective services programs</b>					
Federal.....	8.2	11.1	61.3	67.0	65.5
State.....	67.1	68.3	29.6	24.6	27.0
County/local.....	24.7	20.6	9.1	8.4	7.5

increased from \$4 million to \$10 million. The increase of federal funds resulted primarily from the enactment of the Economic Opportunity Act and increased federal funding for the Manpower Development and Training Act programs. The major increase in state funds is attributable to the expansion of the Adult Basic Education program, with minor increases in other programs. Local funds are expended for the Adult Basic Education program, but they are *not* identifiable for comparative purposes.

The total expenditure for protective services programs increased from \$50 million in fiscal year 1963-64 to \$198 million by 1967-68. Federal funds in these programs increased over that time period from \$4 million to \$130 million, state funds increased from \$34 million to \$54 million, and county/local funds increased from \$12.5 million to \$15 million. Federal expenditures are principally accounted for by the introduction of the Compensatory Education (Title I, ESEA) programs and the protective service programs under the Economic Opportunity Act. The remainder of the federal funds can be accounted for by the increase in scope of previously existing programs.

Increases in state funds are attributable primarily to growth in the Children's Centers and Crippled Children Services programs, with the remainder attributable to the expansion of other protective services programs. Increases in county/local funds for protective services are primarily in Maternal and Child Health Services.

### Relationship of Program Expenditures to Other Factors

In order to view the expenditures for welfare (public social services) in California in a broader perspective, particularly the relationship of the state funds expended in these programs to the total program expenditures, comparison is made to per capita General Fund expenditures (excluding capital outlay) and to per capita personal income.

General Fund expenditures (excluding capital outlay) increased from \$2,041 million to \$3,255 million from fiscal year 1963-64 to 1967-68. The expenditure of state funds for welfare (public social service) programs has increased from \$342 million in fiscal year 1963-64 to \$669 million by 1967-68. During this same period total state funds expended for subsistence and maintenance programs increased from \$264 million to \$398 million. In relation to the General Fund expenditures, state expenditures for all public social service programs changed from 16.7 percent of the General Fund in fiscal year 1963-64 to 20.5 percent by 1967-68. Total state funds expended for subsistence and maintenance programs represented 12.9 percent of the General Fund in 1963-64 and 12.2 percent by 1967-68. Figure 4 shows the rate of growth for the General Fund and for that portion of General Fund expenditures for welfare (public social services) over this period of time.

Since all segments of the California population are represented as participants in the welfare (public social service) programs, Figure 5 and Table 2 present various relationships based on population. Figure 6 graphically demonstrates the rate of increase of program costs as related to population and cost-of-living index increases by fiscal year over the first fiscal year. Figure 7 portrays the rate of increase in the various expenditure elements and funding sources since fiscal year 1963-64 by fiscal year.

## Trends

It is apparent from an examination of the five-year historical trends that the major program changes have resulted primarily from implementation of federal programs. Therefore, in order to extend the trends established over the period from fiscal year 1963-64 through fiscal year 1967-68 to future years requires assumptions that:

1. Present program structure will not be substantially changed and no new programs initiated.
2. Present funding formulas will remain constant.
3. Population projections will not vary from present estimates.

By trending factors, such as the relation of welfare (public social service) programs to General Fund expenditures (excluding capital outlay), a possible range of future expenditures of state funds for welfare (public social services) and state funds for subsistence and maintenance programs can be derived. This is presented in Figure 8.

Table 2.

Per Capita Comparisons 1963-64 through 1967-68

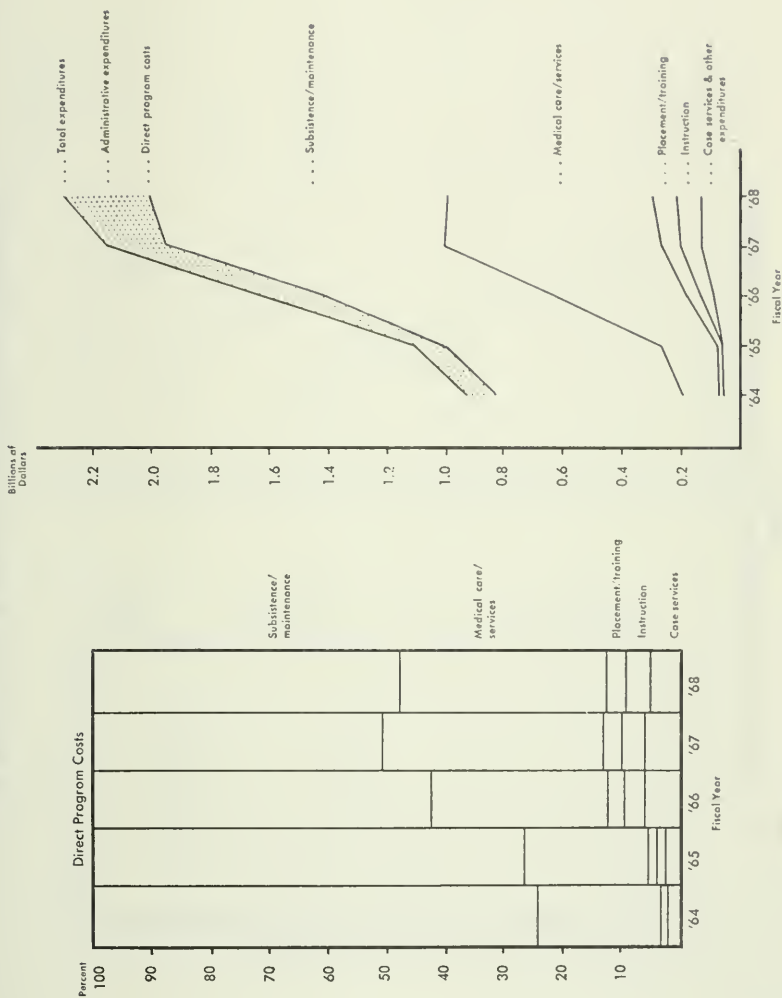
	Fiscal Years				
	1963-64 (dollars)	1964-65 (dollars)	1965-66 (dollars)	1966-67 (dollars)	1967-68 (dollars)
Personal income (billions) -----	52.3	56.1	60.0	65.0	70.2
Per capita -----	2,997	3,133	3,258	3,457	3,631
General fund expenditures* <sup>1</sup> -----	2,041,481	2,316,075	2,556,212	2,968,681	3,255,661
Per capita -----	114.04	125.76	136.03	154.74	165.58
Total welfare (public social services) expenditures* -----	921,413	1,109,345	1,587,362	2,167,799	2,297,276
Per capita -----	51	60	84	113	117
Total state fund expenditures for welfare (public social services)* -----	341,854	405,472	516,467	645,205	669,579
Per capita -----	19	22	27	34	34
Total state fund expenditures for subsistence and maintenance programs* -----	303,887	362,405	468,283	589,625	606,117
Per capita -----	17	20	25	30	31
Total state fund expenditures for training or rehabilitation programs* -----	4,084	4,850	4,725	9,423	9,910
Per capita -----	0.22	0.26	0.25	0.49	0.50
Total state fund expenditures for protective services -----	33,883	38,127	43,403	46,099	53,521
Per capita -----	1.89	2.07	2.30	2.40	2.72

\* In thousands of dollars.

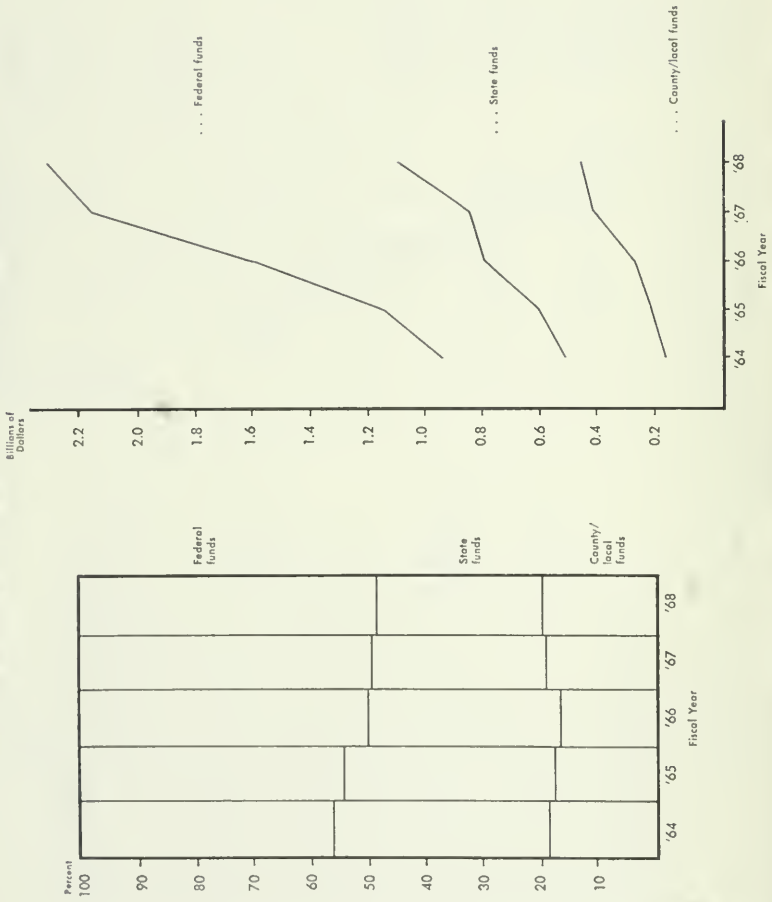
<sup>1</sup> Excluding capital outlay.



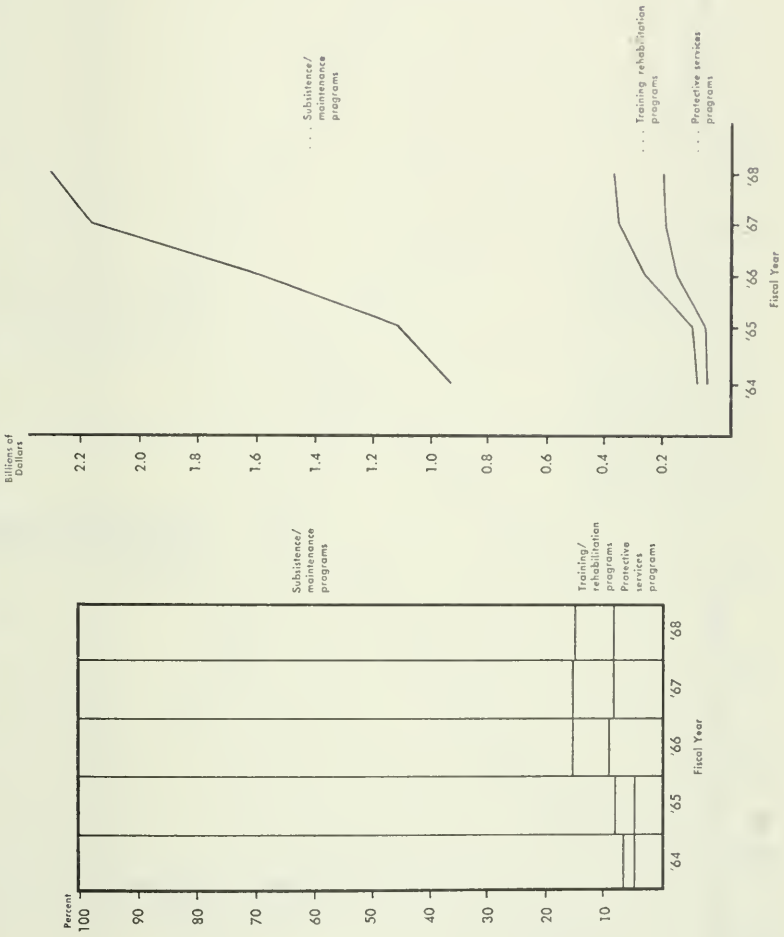
**Figure 1.**  
Total Expenditures by Categories and Distribution 1963-64 through 1967-68



**Figure 2.**  
**Total Expenditures by Sources of Funds 1963-64 through 1967-68**

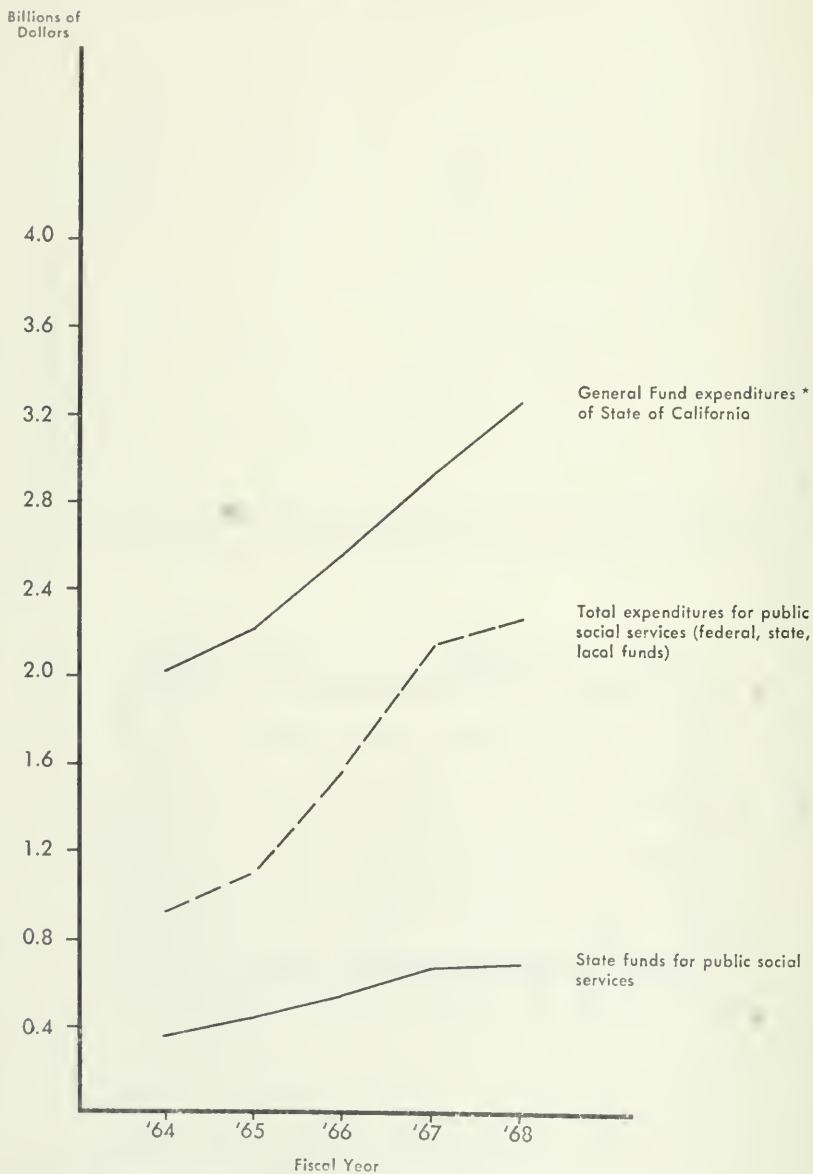


**Figure 3.**  
Expenditures by Program Categories 1963-64 through 1967-68

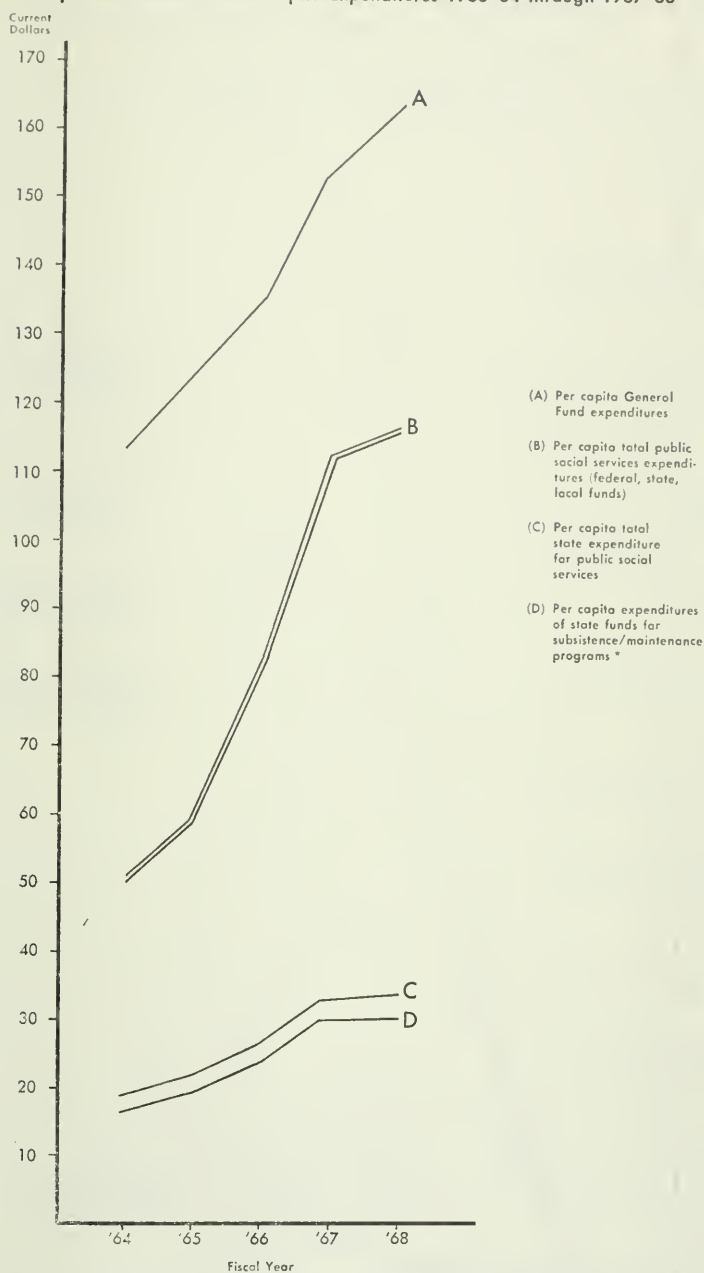


**Figure 4.**

Comparison of Public Social Services Expenditures with General Fund Expenditures 1963-64 through 1967-68



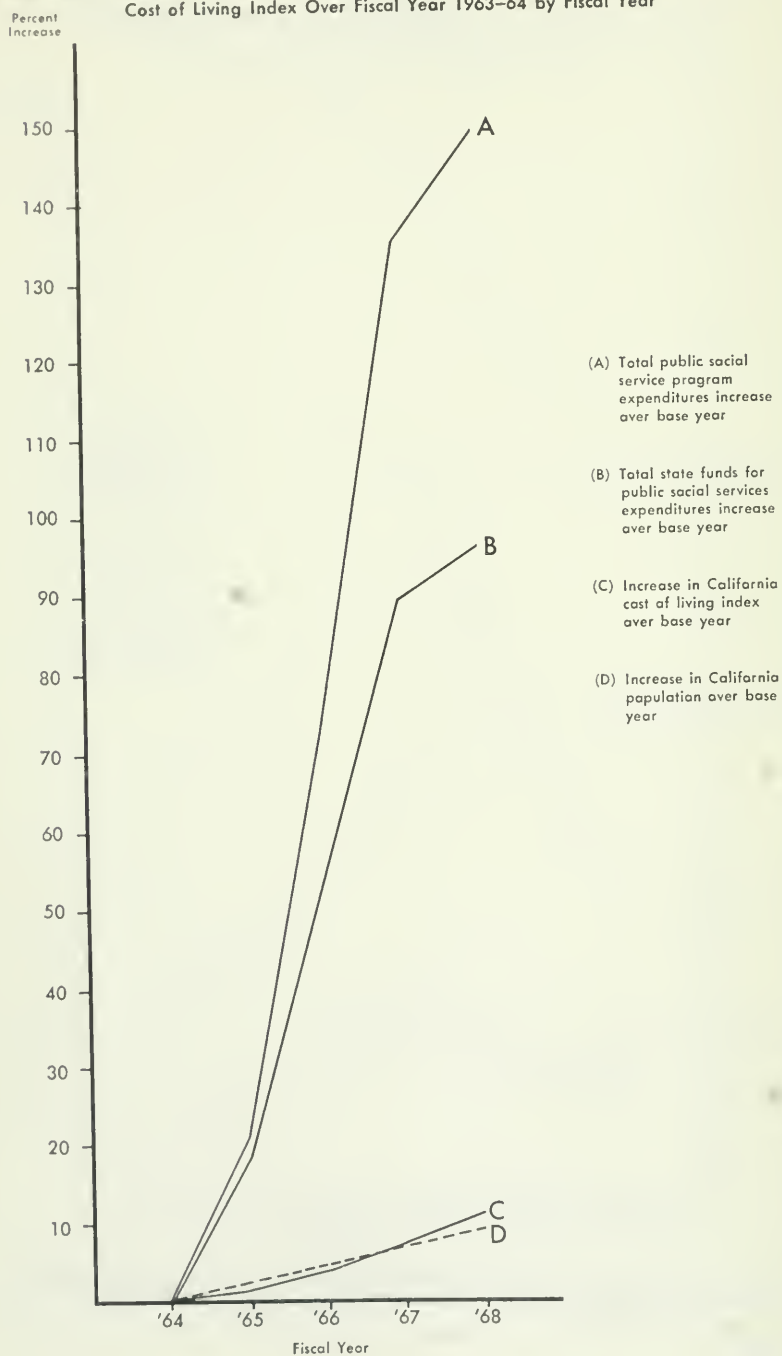
\* Includes State Operations and Local Assistance.

**Figure 5.****Comparison of Various Per Capita Expenditures 1963-64 through 1967-68**

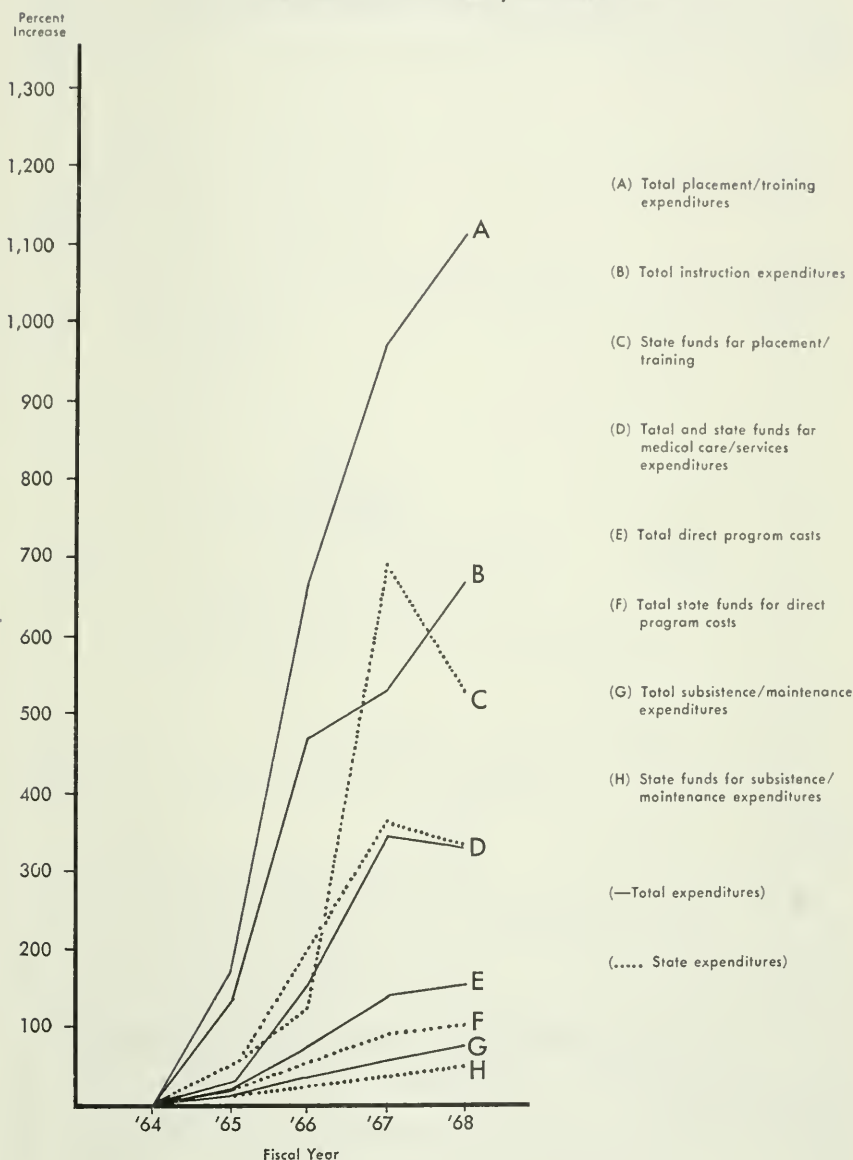
\* (Per capita state expenditures for training/rehabilitation programs and for protective services programs cannot be plotted on same scale.)

**Figure 6.**

**Percent of Increase of Expenditures for Welfare (Public Social Services), Population and Cost of Living Index Over Fiscal Year 1963-64 by Fiscal Year**



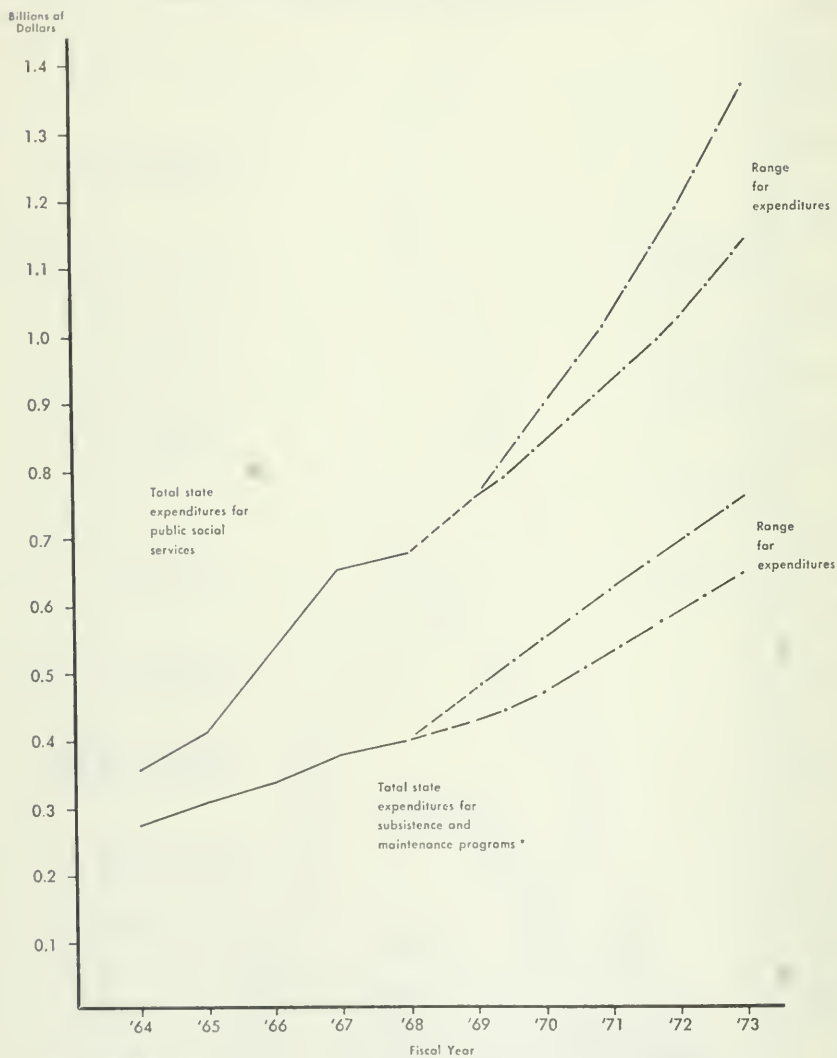
**Figure 7.**  
Increases in Total Program Costs and Program Elements  
Over Fiscal Year 1963-64 by Fiscal Year





**Figure 8.**

Trends in State Fund Expenditures 1963-64 through 1972-73



\* Including Medi-Cal.

## V. INVENTORY OF PROGRAMS

This section of the report contains a description and tabulation of statistical information on each of the programs included in the study of welfare (public social service) program costs in the State of California. Each program description includes the following areas:

- I. General Description
- II. Program Background
- III. Federal Requirements
- IV. State Implementation
  - A. Organization and Administration
  - B. Eligibility
  - C. Benefits
- V. Funding
- VI. Statistics
  - A. Program Expenditures
    - 1. Total Expenditures
    - 2. Administrative Expenditures
    - 3. Direct Program Costs
  - B. Sources of funds by Expenditure Category
  - C. Case Count

The specific programs which were included in this study and are detailed in this report include the following:

<i>Program</i>	<i>Page Number</i>
1. General Relief Program.....	39
2. The Old Age Security Program.....	44
3. Aid to the Blind, Aid to the Potentially Self-Supporting Blind.....	53
4. Aid to the Needy Disabled.....	63
5. Aid to Families with Dependent Children.....	72
6. Cuban Refugee Program.....	83
7. Temporary Assistance for Repatriated Americans.....	89
8. The Food Stamp Program.....	92
9. Family and Children Services and Adoptions.....	102
10. Day Care Services.....	109
11. Protective Services for the Mentally Handicapped.....	115
12. Special Social Services.....	120

<i>Program</i>	<i>Page Number</i>
13. The California Medical Assistance Program (Medi-Cal)-----	123
14. Vocational Rehabilitation Programs-----	134
15. Maternal and Child Health-----	147
16. Crippled Children Services-----	154
17. School Lunch Programs-----	159
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20. Children's Centers -----	174
21. Compensatory Education Projects, Title I of The Elementary and Secondary Education Act-----	179
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23. Manpower Development and Training Act Programs-----	185
24. Human Resources Development Concept-----	192
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## **GENERAL RELIEF PROGRAM**

### **(GENERAL ASSISTANCE PROGRAM)**

#### **I. General Description**

The purpose of General Relief, or General Assistance, as it is sometimes called, is to:

“... relieve and support all incompetent persons, and those incapacitated by age, disease, or accident, lawfully resident (of the county), when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.”<sup>1</sup>

#### **II. Program Background**

County aid to needy persons not in institutions can be dated in California from 1855. Legislation enacted that year made it the responsibility of the board of supervisors to take cognizance of all indigent sick persons and employ such medical aid for their proper treatment as in the board's judgment would be required. State funds were apportioned to the counties in proportion to their population.

In 1883, with the passage of the County-Government Act, each county was required to provide care and maintenance of the indigent sick and otherwise dependent poor; erect and maintain hospitals and poorhouses, at their discretion; or otherwise provide for the indigent sick and poor. The 1883 act made *no* provision for state support.

In 1901, the Legislature passed the Indigent Act making counties responsible for the relief and support of paupers, incompetent poor, indigent persons, or those incapacitated by age, disease, or accident who were lawful residents of the county and not supported by friends, relatives or public or private institutions. Any such person was considered a resident if, in the three months immediately preceding his becoming a public charge, he had resided in the county. Relatives were responsible for the care of such indigents to the extent of their ability, as determined by the county. Responsible relatives included spouse, parents, adult children, brothers, sisters, grandchildren and grandparents living in the state.

The Indigent Act of 1901 was repealed in 1933, but county responsibility for the care of indigent persons was continued by the enactment of Chapter 761 (General Law, Sections 1 to 13) which provided for the aid and relief of indigents. The provisions of the 1933 act gave the counties the responsibility for the aid and relief of all able-bodied indigent persons and those incapacitated by age, disease, or accident. It also instituted a system of liens which the county could place upon the property of a recipient of county relief, and placed a residence requirement on eligibility.

To apply for relief, an individual had to be a resident of the state for three years and a resident of the county to which application was made for one year. However, the board of supervisors could give

<sup>1</sup> State of California, *Welfare and Institutions Code*, Division 9, Part 5, Section 17000.

emergency relief to dependent non-residents if they deemed it to be necessary. Relatives continue to be responsible for the care of such indigent persons, but relatives were redefined as spouse, parent or adult children. Another provision of the act permitted the county to require work of an indigent who was not incapacitated by reason of age, disease, or accident, as a condition of relief.

The broad, general statutes pertaining to county relief resulted in a highly unstructured and individualized program. This unstructured program gave way to more standardized programs when legislation initiating state direction and support for specific types of indigents was enacted. The first of these non-institutional assistance programs were the Aid to Needy Blind and Old-Age Assistance programs enacted in 1929.

During the 1930's, other state and federal programs sought to provide relief through various approaches. "The California State Emergency Relief Administration disbursed large sums for relief to families and single men . . . , while the Civilian Conservation Corps, the Works Progress Administration and other federal agencies sought to provide relief through their own direct approaches."<sup>2</sup>

With the passage of the Federal Social Security Act in 1935, federal support became available for the old-age and blind public assistance programs and established a similar program for needy children. The Social Security Act also contained provisions for Unemployment Insurance. Benefits under the Old-Age and Survivors Insurance provisions, also created by the 1935 act, became payable in 1940.

In 1937, California instituted an Aid to Needy Children program which utilized available federal funds. In the same year the provisions of the 1933 act for the aid and relief of indigents was enacted into the Welfare and Institutions Code (Stats. 1937, C. 464, p. 1406). No major changes were made in the provisions at that time. However, in 1941, the Legislature enacted provisions for the release or subordination of liens placed on the property of recipients of county relief (Stats. 1941, C. 683, p. 2152-3).

The county relief program was further delimited in 1957 when a state program providing state and federal support for needy disabled persons was instituted. Legislation initiating state and federal support for medical services for needy persons, which traditionally was part of the General Relief Program, also began in 1957. The new Public Assistance Medical Care (PAMC) program provided limited outpatient care for public assistance recipients.

In 1962 state and federal support became available for inpatient and outpatient medical services to aged persons receiving public assistance and to aged persons who were able to support themselves but unable to pay for medical care. State and federal support for medically needy persons was broadened with the advent of the California Medical Assistance Program (Medi-Cal) in March 1966.

Although the provisions relating to county relief have not appreciably changed since 1933, the enactment of programs which provided state and/or federal direction and support for assistance and medical services to specific types of indigents has reduced the scope of the

<sup>2</sup> Vaughn Davis Bornet, *California Social Welfare*, Englewood Cliffs, New Jersey, Prentice-Hall, Inc., 1956, page 29.



program. The remaining elements of the general relief program, however, remain unstructured and highly individualized from county to county.

### III. Federal Requirements

There are no federal requirements for the General Relief Program. The only influence exercised over this program at the federal level is a recent injunction which suspended any durational residence requirements for eligibility for general relief in San Francisco, Marin and Alameda Counties pending appeal to the U. S. Supreme Court (Burns, et al. vs. Montgomery, et al.) (In terms of the General Relief Program, the original injunction is binding only on the three-named counties. However, an appeal is pending in the district court to enjoin all 58 counties.)

### IV. State Requirements

#### A. Organization and Administration

The general relief program is totally a county responsibility, subject only to the provisions of the State of California Welfare and Institutions Code. The State Department of Social Welfare becomes involved in the program only if a dispute occurs between counties as to the responsibility for an indigent. Upon submission of the dispute by either county to the state department, the decision of the department is final.

The provisions of the Welfare and Institutions Code relating to General Relief have *not* been substantially amended since 1937. However, the provisions relating to the durational residence requirements have been affected by a federal court injunction which was described in Section III, Federal Requirements.

The basic requirements of the Welfare and Institutions Code relating to General Relief are:

1. Every county is required to furnish relief to indigent residents not supported by relatives, friends, or state or federal assistance programs. (County hospital care is provided as part of the responsibility to care for the indigent sick.)
2. The board of supervisors or the agency authorized by county charter in each county is required to adopt standards of aid and care which are open to public inspection.
3. The board of supervisors or such person or society as it may authorize is required to:
  - (a) investigate every application for relief,
  - (b) supervise every person receiving relief by periodic visits,
  - (c) devise means of rehabilitating such persons,
  - (d) keep complete records of such activities.

Records must be confidential and are not open to examination, except by designated state and county officials. However, a citizen is entitled to demand and receive a statement of the amount, character, and value of the relief received by any person.

Additional provisions of the Welfare and Institutions Code permit counties to:

1. Incur the necessary expenses to send a nonresident indigent to another state or county when the person has legal residence in

- such state or county, if funds are not available from other sources;
2. Grant emergency relief to nonresidents if the board of supervisors deems it necessary;
  3. Establish their own policies with reference to the amount of property, if any, a person shall be permitted to retain while receiving assistance to the extent that an applicant shall be required to apply his property to his support;
  4. Allow an amount in the budget of an indigent who resides in his own home to permit retention of the property as a place of residence;
  5. Require the applicant, as a condition to the receipt or continuation of aid, to transfer or grant to the board of supervisors such property as the board may specify, or place a lien on such property, subject to the following conditions:
    - (a) Interment plots, specified amounts of care and specified values of personal effects, burial trusts, and cash surrender value of insurance policies are exempt from such transfer or grant;
    - (b) No lien can be enforced against the home of a person who received care in a county hospital as a recipient of general relief (1) during the lifetime of the individual or spouse, (2) during the minority of children residing in the home, or (3) during the lifetime of any dependent adult child who resides in the home;
    - (c) Liens may be transferred, released or subordinated under specified circumstances;
  6. Require work of any recipient who is not incapacitated by age, disease or accident, as a condition of relief;
  7. Make a claim for a reasonable charge for moneys so expended against a person who received general relief and who later acquires property;
  8. Provide for the burial or cremation of the indigent dead and for the maintenance of the graves.

### **B. Eligibility**

To be eligible for General Relief, a person must have continuously resided in California for a period of three years and in the county where application is made for one year immediately preceding application. In determining residence, the following factors must be considered:

1. Time spent in a public institution or on parole therefrom cannot be counted in determining either state or county residence;
2. Time spent in a private charitable institution cannot be counted in determining county residence;
3. State residence is lost by remaining away from the state for an uninterrupted period of one year;
4. If an applicant has no residence in the county of application, the county wherein he last resided continuously for one year is responsible for his support;
5. If an applicant has no year's residence within three years preceding application, that county wherein he was present for the



longest time during the three-year period shall be responsible for his support.

The residence of certain individuals is determined in the following manner:

1. The residence of an unmarried minor child is the residence of the father while he has legal custody; or if he does not have custody, the residence of the mother while she remains unmarried and has legal custody;
2. The residence of an orphan is that of the last deceased person who had legal custody.

An applicant or recipient is entitled to retain the tools of his trade and an automobile of reasonable value necessary to continue or seek employment without effect on his eligibility or amount of aid. However, the board of supervisors is responsible for determining what tools of the trade may be retained and the reasonable value of an automobile.

The amount of property a person is permitted to have while receiving assistance is subject to county determination.

Relatives are responsible for the support of a recipient to the extent that assistance provided by the county shall be charged against the spouse, parent or adult child of the recipient. The board of supervisors is required to determine if any legally responsible relative has financial ability to support or contribute to the support of the recipient.

### C. Benefits

The amount and type of assistance provided to recipients of general relief is determined by each *county*. Assistance is granted in cash or in kind to provide groceries, rent, property payments, utilities, room and board, hotel rent, and restaurant meals. Each person's needs are considered individually.

Referral services to other public assistance programs or private agencies are also provided.

### V. Funding

The General Relief program is financed 100 percent from county funds.

### VI. Statistics

#### A. Total Subsistence and Program Expenditures for General Relief and Other Welfare Programs

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	31,955	24,951	25,061	30,767	33,593
2. Total administrative expenditures.....	7,616	5,826	6,516	7,404	6,646
State administration.....	7,616	5,826	6,516	7,404	6,646
County administration.....					
3. Total assistance expenditures.....	24,339	19,125	18,545	23,363	26,947
Subsistence/allowance.....	22,885	17,357	18,485	23,363	26,947
Medical care/services.....	1,454	1,768	60		

## B. Sources of Funds for General Relief and Other Welfare Programs

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
State-----	177	292	639	695	-----
County-----	31,778	24,659	24,422	30,072	33,593
2. Total administration expenditures					
State-----	177	292	639	695	-----
County-----	7,439	5,534	5,877	6,709	6,646
3. Assistance expenditures					
Subsistence—county-----	22,885	17,357	18,485	23,363	26,947
Medical care—county-----	1,454	1,768	60	-----	-----

## C. Recipient Count—General Relief and Other Welfare Programs

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Average number of monthly recipients-----	68,721	36,045	33,288	41,787	-----

## OLD AGE SECURITY PROGRAM

### I. General Description

The purpose of the Old Age Security Program is to provide needy persons 65 years of age and over with:

1. Income to supplement their own resources and thus enable them to secure the necessities of life;
2. Such other services as are needed to promote their physical and social well-being to the end that they may, insofar as possible, remain active participating members of their community.<sup>1</sup>

### II. Program Background

California had a state Old Age Assistance program as early as 1883. This program, with maximum grants of \$15 a month, continued until 1895 when under an economy program it was repealed. From 1895 to 1929, a period of 34 years, support of needy aged persons in California was entirely a local responsibility.

In 1929, California adopted the first statewide mandatory "Aid to Needy Aged" plan in the United States. To qualify, a person had to be in need and at least 70 years old. Maximum payments were \$30 a month, shared equally by county and state.

Title I of the 1935 Federal Social Security Act instituted a program of federal participation in payments by states toward the support of the economically indigent aged. It was termed "Old Age Assistance"

<sup>1</sup> California Department of Social Welfare, "State of California Old Age Security: General Information" (Sacramento: California Office of State Printing, 1968), p. 1.

(OAA). Direct administration of benefits and most decisions as to eligibility, need, and amount to be paid were left to the states. Under the matching formula of the act, federal reimbursement to a state was one-half of the first \$30.00 spent by the state. Federal reimbursement for a state's administrative costs was limited to 5 percent of the total of federal matching funds paid toward recipient benefits in the state. The amount of federal money to be spent in the program after the first year was open-ended. That is, the federal government agreed to pay its share of the cost of the program without limitation. The cost depended on the degree of participation of those states which elected to implement the program and met the federal requirements for participation. On April 1, 1936, the California program, modified from the original one of 1929, was approved by federal officials; however, the California program was known as "Old Age Security" (OAS) rather than "Old Age Assistance" (OAA).

Applications for participation in the OAS program were made by individuals to their respective county welfare department, and determination of eligibility was made at the county level. The State Department of Social Welfare supervised administration of funds, kept information and statistics, established personnel standards, paid aid to recipients through the counties, and reported to the appropriate federal officials. A State Social Welfare Board was appointed by the Governor to adopt such rules and regulations as were necessary to carry out the law in administration of OAS. In 1955 a Citizens Advisory Commission on the Aging was created to advise the Governor on the needs and problems of the aged. The commission was comprised of eight members appointed by the Governor, including two from each house of the Legislature.

Between 1935 and 1963 the major changes in the federal law relating to OAA involved:

1. Increases in the amount and ratio of federal participation;
  - a. By 1958, federal funds provided from \$41.50 to \$46.70, depending on a state's per capita income, of the first \$65.00 of the recipient's grant.
  - b. By 1962, federal funds provided 50 percent of most state administrative costs.
2. Adoption of a sliding scale in 1958, which provided for federal matching based on each state's per capita income and based payments on the average state cost per recipient rather than requiring computations for individual recipients;
3. Increased emphasis beginning in 1962 on personal training and rehabilitative services, with 75 percent of the costs being paid by the federal government to those states which decided to include such services in their OAA program;
4. Provision for federal sharing in the costs of vendor payments for certain medical services to OAA recipients;
  - a. From 1950 to 1960 a recipient's vendor payment and cash grant were added, with no special reimbursement being provided for the former. (California had no vendor payments for medical assistance until 1957.)

- b. After 1960 additional reimbursement for vendor costs was provided up to a maximum federal payment of \$9.60 per recipient.
5. Authorization, through the Kerr-Mills amendments of 1960, of federal financial participation in the establishment and operation of state programs for providing largely inpatient medical care for persons qualifying for OAA (see *The California Medical Assistance Program*).

The Medical Assistance for the Aged program became operative in California on January 1, 1962. Also in 1962, as the result of legislation passed in 1961, automatic, annual cost-of-living increases in aid payments were adopted. The first such increase was made on December 1, 1962.

### III. Federal Requirements

Title I of the Federal Social Security Act provides for federal aid in the establishment and maintenance by states of Old Age Assistance programs. The act provides certain guidelines which a state is required to follow to qualify for federal participation. The state's program is required to:

1. Be in effect in all political subdivisions of the state;
2. Provide for a single state agency to supervise or administer the plan;
3. Provide for financial participation by the state;
4. Provide an opportunity for a fair hearing before the state agency to any individual whose claim is denied;
5. Establish and maintain personnel standards on a merit basis;
6. Provide, effective July 1, 1969, for training and use of paid subprofessional staff with emphasis on employment of recipients and other persons of low income and for use of volunteers in service programs;
7. Provide that the state agency will make such reports as the secretary may from time to time require;
8. Provide reasonable standards for determining eligibility and amount of assistance;
9. In determining need, take into consideration any other income and resources of any person claiming aid (certain amount of earned income is exempt);
10. Restrict the use or disclosure of information;
11. Provide that all individuals wishing to make application for Old Age Assistance shall have opportunity to do so and that aid shall be furnished with reasonable promptness to all eligible persons;
12. Provide a state agency for setting and maintaining institutional standards if care for persons in them is included in the plan;
13. If the state provides assistance to or for patients in mental institutions, prepare a comprehensive state program for mental health with periodic review, alternate methods of care, and an appropriate individual plan for each one of such patients.



In addition to the above federal requirements for positive state actions, the Social Security Act contains certain prohibitions on states which wish to qualify for federal participation in the costs of OAA. States are prohibited from:

1. Instituting any age requirement in excess of 65 years of age.
2. Requiring residence in the state of more than one year immediately preceding application and five of the last nine years.
3. Instituting a citizenship requirement which excludes any citizen of the United States.

A 1965 federal regulation mandated that, beginning October 1, 1965, a bachelor's degree be required for persons employed as entry-level social workers or first-line supervisors. Another 1965 amendment to the federal Social Security Act allowed states to exempt an additional \$5.00 of income in determining eligibility and assistance. A 1967 amendment increased the amount to \$7.50. California has not taken the option of extending this exemption to OAS recipients.

Also provided for in the 1967 amendments are vendor payments in behalf of persons who qualify for Old Age Security, and who are living in facilities which are more than boarding houses, but which are less than skilled nursing homes (intermediate care). Such homes have to meet safety and sanitation standards comparable to those required for nursing homes in a given state.

#### **IV. State Implementation**

##### **A. Organization and Administration**

Each county welfare department in California accepts and approves or denies applications for OAS. Supervision of counties in their determination of eligibility, their payment of aid, provision of services, etc., are responsibilities of the State Department of Social Welfare. The county department administers the OAS program in accordance with federal and state standards. In 1965 the power to issue rules and regulations necessary for the implementation of the program was transferred from the State Social Welfare Board to the Director of the State Department of Social Welfare. Since that time the board has acted in an advisory capacity. The director or departmental referees has the additional responsibility of hearings appeals from OAS applicants and recipients regarding administrative decisions.

Prior to January 1, 1964, the beginning date of aid was usually the first of the month in which the investigation of eligibility was completed. However, the beginning date could not precede the date of application. If the investigation was extended, the beginning date was the first of the month following the expiration of 45 days after application.

Since January 1, 1964, the usual beginning date is the first of the month following the date of application. If the applicant is in immediate need when he applies and appears eligible, aid can be granted from the date he completes a declaration of his eligibility.

The state has participated in the trend toward providing more services to recipients of public assistance, and on June 30, 1968, implementation of a program separating the functions of determining eligibility and grant from that of providing social services was largely completed.

Under California law, legal protections are extended to recipients of OAS. These protections include:

1. Public assistance grants cannot be assigned, attached, sold, or passed through bankruptcy hearings;
2. Applicants and recipients must be allowed to inspect their documents virtually without delay;
3. The Department of Social Welfare must investigate complaints regarding county administration of OAS;
4. Personnel administering the program may not dictate how any recipient spends his grant or control his manner of living, unless he is legally declared incompetent or admitted to a state hospital for care;
5. Checks to recipients cannot include any words or abbreviations indicative of aid, assistance or charity;
6. Aid cannot be denied because of a transfer of property which does not deprive the recipient of its use, enjoyment or income unless the value of the property transferred would have resulted in ineligibility;
7. Aid granted to a recipient of public assistance shall not constitute a lien upon any property of the recipient.

In accordance with their ability to pay, adult children of OAS recipients are required to contribute to the support of their parents. Ability to pay is determined by net income. Net income is considered gross income minus a straight 25 percent for exemption and deductions. The table below shows the maximum liability for adult children who are not self-employed. (Expenses necessary for obtaining the income are also deducted for the self-employed persons.)

RELATIVES' CONTRIBUTION SCALE

If gross monthly income is	Then net monthly income is	Maximum required monthly contribution if number of persons dependent upon income is					
		1 (self)	2	3	4	5	6 or more
\$534.66 or under.....	\$400 or under.....	\$0	\$0	\$0	\$0	\$0	\$0
534.67- 601.33.....	401- 450.....	5	0	0	0	0	0
601.34- 667.99.....	451- 500.....	10	0	0	0	0	0
668.00- 734.66.....	501- 550.....	15	0	0	0	0	0
734.67- 801.33.....	551- 600.....	20	0	0	0	0	0
801.34- 867.99.....	601- 650.....	25	5	0	0	0	0
868.00- 934.66.....	651- 700.....	30	10	0	0	0	0
934.67-1,001.33.....	701- 750.....	35	15	0	0	0	0
1,001.34-1,067.99.....	751- 800.....	40	20	0	0	0	0
1,068.00-1,134.66.....	801- 850.....	45	25	5	0	0	0
1,134.67-1,201.33.....	851- 900.....	50	30	10	0	0	0
1,201.34-1,267.99.....	901- 950.....	55	35	15	0	0	0
1,268.00-1,334.66.....	951-1,000.....	60	40	20	0	0	0
1,334.67-1,367.99.....	1,001-1,025.....	65	45	25	5	0	0
1,368.00-1,401.33.....	1,026-1,050.....	70	50	30	10	0	0
1,401.34-1,434.66.....	1,051-1,075.....	75	55	35	15	0	0
1,434.67-1,467.99.....	1,076-1,100.....	80	60	40	20	0	0
1,468.00-1,501.33.....	1,101-1,125.....	85	65	45	25	5	0
1,501.34-1,534.66.....	1,126-1,150 <sup>1</sup> .....	90	70	50	30	10	0

<sup>1</sup> For each additional \$25 net income over \$1,150, the maximum required monthly contribution is increased \$5.  
SOURCE: State Department of Social Welfare, Regulation Sec. 42-509, 31.

## B. Eligibility

Eligibility is granted to residents of California who are 65 years of age or over and who meet certain criteria of need. In determining eligibility, recipients are allowed to retain certain amounts of income and property. Since July 1965, certain payments under Title I and Title II of the Economic Opportunity Act (EOA) were excluded as income, and in October of that year, the exemption of earned income was raised from a maximum of \$30.00 to a maximum of \$50.00. Recipients can have, exclusive of a home, which is exempt, real property up to \$5,000 assessed valuation, but it must be income-producing. Taking into account numerous exemptions, the value of a recipient's personal property must not exceed \$1,200 (\$2,000 per couple, if both receive public assistance). In March 1966, patients in tuberculosis or mental hospitals (or in any public hospital as a result of a diagnosis of either of these diseases) were first allowed to participate in the program. The foregoing qualifications and others of the state and federal government are detailed on the following table.

STATE AND FEDERAL REQUIREMENTS FOR RECIPIENTS  
OF OLD AGE SECURITY

	State requirements	Federal requirements
Age.....	65 and older	Same
Residence.....	5 of the past 9 years, including 1 year immediately preceding application*	Not in excess of 5 of the last 9 years and 1 year immediately preceding application
Real property exemption.....	A home (residence), and additional property up to \$5,000 assessed value less encumbrances (must be income producing). Income must be applied to recipient's needs	No money limit, but property held must be utilized.
Personal property exemption ..	Maximum of \$1,200 (\$2,000 per couple if both on aid). Exempt: Motor vehicle used for transportation and personal effects (e.g., clothing, household furniture, etc.)	\$2,000 limit per recipient
Income exemption.....	First \$20 of earned income, plus $\frac{1}{2}$ of next \$60	Same
	\$35 of net OEA earnings, plus $\frac{1}{2}$ of remainder	Same
	Not implemented	Permissive exemption of \$7.50 of income from any source
Citizenship.....	None	No state requirement allowed which excludes any U.S. citizen
Institutionalization.....	Patient, but not an inmate, of a public institution	Same
Obligations.....	Report all income and any change in circumstances that might affect eligibility	Must be defined in state plan

\* A preliminary injunction suspended all residence requirements, pending a decision by the U.S. Supreme Court in *Burns et al. v. Montgomery, et al.*

## C. Benefits

Old Age Security provides a grant which supplements a recipient's non-exempt income in order to provide a total income of at least \$123.50. This minimum amount is for "basic needs" (e.g., food, clothing, and housing). If a recipient has "special needs" (e.g., special diets, excessive transportation costs, etc.), the grant together with other income may be increased up to a maximum of \$188.50. An additional grant up to \$300.00 a month is possible when a person needs extensive



attendant care in order to remain in his own home. The 1967 amendments provided federal reimbursement for repairs to recipients' homes up to \$500, provided this is the most economical means of providing adequate housing for the recipient.

From the standpoint of recipients, probably the most significant change since 1963 was the institution of the California Medical Assistance Program (Medi-Cal) on March 1, 1966. The maximum amount of grants did not increase, but recipients no longer need to expend part of their grants on medical services.

A provision which became effective January 1, 1966, permits payments to third parties when recipients are physically or mentally unable to manage their grant.

Since the 1962 Federal Social Security Act amendments, there has been an increase in the provision of rehabilitative and other social services to OAS recipients.

## **V. Funding**

The federal government assumes a substantial portion of OAA (OAS) grants to recipients. In fiscal year 1963-64 the exact amount reimbursed by the federal government was based on a complex formula which increased the federal contribution per recipient as the state's expenditure per recipient went up and/or its per capita income went down. Under this formula the federal government paid 29/35ths of the first \$35, 50 to 65 percent (depending on the state's per capita income) of the next \$35, and 50 to 80 percent for up to \$15 of additional vendor payments for medical care. This resulted in maximum federal reimbursement of \$54 to \$63.75 per grant, depending on the state's per capita income. When applied to California, this formula resulted in the state receiving a maximum of \$43.50 a month per eligible recipient from December 1, 1962 through December 31, 1965.

On January 1, 1966, the basis of the federal share of the financing of OAS was changed. Since then, the state has received reimbursement for 50 percent of the average monthly payment for OAS recipients. The new formula was provided by the federal government as an option to those states which implemented a medical assistance program under Title XIX of the Social Security Act. The new formula has resulted in an increased proportion of federal funds in the total expenditures for OAS in the state.

In addition to the reimbursement for payments to recipients, the federal government provides 50 percent reimbursement for ordinary state and county administrative costs, including case work services related to providing public assistance payments to recipients.

Legislation passed by Congress in 1962 and broadened by subsequent amendments raised federal reimbursement to 75 percent of county administrative costs in providing specified rehabilitative and social services to OAS recipients. Only counties with an approved plan for providing these specialized services receive 75 percent rather than 50 percent reimbursement.

Effective July 1, 1969 an expanded list of social services will be eligible for 75 percent federal reimbursement.

The following table shows the federal-state-county sharing formula from 1963 to the present.

CHART OF FINANCIAL PARTICIPATION IN THE  
OLD AGE SECURITY PROGRAM \*

Period covered	Maximum grant (dollars)	Ratio of participation		
		Federal share (dollars)	State share	County share
12/1/62-11/30/63.....	171.00	43.50 per eligible person	6/7 of remainder	1/7 of remainder
12/1/63-11/30/64.....	172.00	43.50 per eligible person	6/7 of remainder	1/7 of remainder
12/1/64-11/30/65.....	174.00	43.50 per eligible person	6/7 of remainder	1/7 of remainder
12/1/65-12/31/65.....	176.00	43.50 per eligible person	6/7 of remainder	1/7 of remainder
1/1/66-11/30/66.....	179.50	50 percent	6/7 of remainder	1/7 of remainder
12/1/66-11/30/67.....	181.50	50 percent	6/7 of remainder	1/7 of remainder
12/1/67-11/30/68.....	184.50	50 percent	6/7 of remainder	1/7 of remainder
12/1/68-present.....	188.50	50 percent	6/7 of remainder	1/7 of remainder

\* Adapted from California State Department of Social Welfare, Form DFA 234A (11/66).

## VI. Statistics

### A. Total Subsistence and Program Expenditures for Old Age Security (OAS)

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	*329,534	*311,672	*347,486	*376,915	*378,295
2. Total administrative expenditures <sup>a</sup> .....	23,751	25,397	27,381	29,554	21,992
State administration.....	1,080	1,131	1,261	1,146	<sup>b</sup> 983
County administration.....	22,671	24,266	26,120	28,408	7,052
County case services costs.....	n.a.	n.a.	n.a.	n.a.	13,957
3. Total assistance expenditures <sup>a</sup> .....	305,783	316,275	320,105	347,361	356,303
Subsistence/allowances.....	305,783	316,275	320,105	347,361	356,303
Medical care/services.....	†	†	†		

\* Does not include expenditures for medical care.

<sup>a</sup> Includes case service costs from fiscal year 1963-64 to 1966-67.

<sup>b</sup> Does not include unallocated special departmental programs.

† See *The California Medical Assistance Program*, Part VI, Statistics.

n.a. Not available.

### B. Sources of Funds for Old Age Security Program (OAS)

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	151,058	154,625	165,631	189,421	190,914
State.....	144,506	151,384	146,449	151,103	153,478
County.....	33,970	35,663	35,406	36,391	33,903
2. Total administrative expenditures*					
Federal.....	13,268	14,326	15,685	17,142	12,784
State.....	514	548	598	537	703
County.....	9,969	10,523	11,098	11,875	8,505
3. Assistance expenditures					
Subsistence					
Federal.....	137,790	140,299	149,946	172,279	178,130
State.....	143,992	150,836	145,851	150,566	152,775
County.....	24,001	25,140	24,308	24,516	25,398

\* Includes case service expenditures.

### C. Recipient Count and Payments—Old Age Security (OAS)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Average number of monthly recipients.....	266,374	270,847	275,944	284,311	290,430
2. Fiscal year ending, number of recipients.....	268,014	273,227	280,959	287,265	291,886
3. Average monthly payment per recipient					
Total.....	108.95	111.21	†109.46	101.51	105.80
Subsistence.....	95.94	97.51	96.93	101.51	105.80
Medical care.....					

\* See *The California Medical Assistance Program*.

† Includes Medi-Cal cash grant payments.

## AID TO THE BLIND

### AID TO THE POTENTIALLY SELF-SUPPORTING BLIND

#### I. General Description

There are two public assistance programs for the blind in California: Aid to the Blind (AB) and Aid to the Potentially Self-Supporting Blind (APSB).

The purpose of the Aid to the Blind program is:

“... to provide financial assistance to persons who, because of loss or impairment of sight, are unable to provide themselves with the necessities of life.”<sup>1</sup>

The purpose of the Aid to the Potentially Self-Supporting Blind program is:

“... to provide financial assistance to persons who, because of loss or impairment of sight, are unable to fully provide themselves with the necessities of life, but who are working on a plan for self-support.”<sup>2</sup>

#### II. Program Background

An Aid to the Blind program was initiated in California in 1929 and called “Aid to the Needy Blind.” Prior to this time, the blind were almost completely dependent on their relatives or county relief.

The enactment of the Federal Social Security Act in 1935 instituted a program of federal participation in payments by states toward the support of the indigent blind. The new Aid to the Blind program, like the other two public assistance programs included in the act, was based on an open-end authorization.

The states were to make monthly cash payments to eligible indigent blind persons to pay for their living expenses, and the federal government would reimburse the state for part of their costs through periodic grants of money. Under the matching formula of the act, federal reimbursement to a state was one-half of the first \$30 spent by the state.

If a state wished to participate in the program, it prepared a plan which met certain federal standards. The program was required to: (1) Operate in every county in the state; (2) use certain specified administrative procedures; and (3) refrain from imposing excessive residence requirements. Eligibility requirements to receive aid under this program were left to the individual states.

The State of California instituted the federal program, and the first benefits were paid in July 1936.

Applications for participation in the AB program were made by individuals to their respective county welfare department, and determination of eligibility was made at the county level. The State Department of Social Welfare supervised administration of funds, kept information and statistics, established personnel standards, paid aid to recipients through the counties, reported to the appropriate federal officials, and made determinations of medical eligibility in the program. A

<sup>1</sup> California State Department of Welfare, *Social Welfare Programs for the Blind*, Sacramento, January, 1968.

<sup>2</sup> *Ibid.*

State Social Welfare Board was appointed by the Governor to adopt such rules and regulations as were necessary to carry out the law in administration of AB.

The Aid to the Potentially Self-Supporting Blind program began in California in 1941. This program was the first of its kind in the nation and was administered by each county. No federal matching funds were provided for this program.

Between 1935 and 1963 the major changes in the federal law relating to AB involved:

1. Liberalization of the eligibility requirements in 1950 by granting eligibility to all inmates of public medical institutions except those suffering from tuberculosis or mental illness.
2. Adoption of incentives to encourage recipients to do useful work:
  - a. Beginning in 1950, states were required to disregard the first \$50 of monthly earned income in determining the need of an applicant for assistance.
  - b. In 1960 the amount of the exemption for earned income was increased to \$85.
3. Adoption in 1958 of a sliding scale which provided that federal matching would henceforth be based on each state's per capita income. Federal reimbursement to a state was computed from the average state cost per recipient rather than requiring computations for individual recipients.
4. Increased emphasis, beginning in 1962, on personnel training and rehabilitative services with 75 percent of the costs being paid by the federal government to those states which chose to include such services in their AB program.
5. Provision for federal sharing in the costs of vendor payments for certain medical services to AB recipients;
  - a. From 1950 to 1962, a recipient's vendor payment and cash grant were added, with no special reimbursement being provided for the former. (California had no vendor payments for medical assistance until 1957.)
  - b. In 1962 additional reimbursement for vendor costs was provided up to a maximum federal payment of \$9.60 per recipient.

A major change in state law occurred in 1960 when automatic annual cost-of-living increases in aid payments went into effect. The first such increase was made on December 1, 1960.

### III. Federal Requirements

Title X of the federal Social Security Act provides for federal aid in the establishment and maintenance by states of the Aid to the Blind program. The act provides certain guidelines which a state is required to follow to qualify for federal participation.

The state's program is required to:

1. Be in effect in all political subdivisions of the state;
2. Provide for financial participation by the state;
3. Provide for a single state agency to administer or supervise the plan;



4. Provide an opportunity for a fair hearing before the state agency to any individual whose claim is denied;
5. Establish and maintain personnel standards on a merit basis;
6. Provide, effective July 1, 1969, for training and use of paid subprofessional staff with emphasis on employment of recipients and other persons of low income and for use of volunteers in service programs;
7. Provide that the state agency will make such reports as the Secretary may from time to time require;
8. Provide that no aid will be furnished to an individual who is receiving Old-Age Assistance or Aid to Families with Dependent Children;
9. Provide reasonable standards for determining eligibility and amount of assistance;
10. In determining need, take into consideration any other income and resources of any person claiming aid (certain amount of income is exempt);
11. Restrict the use or disclosure of information;
12. Provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
13. Provide that all individuals wishing to make an application for Aid to the Blind shall have the opportunity to do so, and that aid shall be furnished with reasonable promptness to all eligible persons;
14. Provide a state agency for setting and maintaining institutional standards if care for persons in them is included in the plan;
15. Provide a description of the services (if any) which the state agency makes available to applicants for and recipients of Aid to the Blind to help them attain self-support or self-care, including a description of the steps taken to assure maximum utilization of other agencies providing similar or related services.

In addition to the above federal requirements for positive state actions, the Social Security Act contains certain prohibitions on states which wish to qualify for federal participation in the costs of AB. States are prohibited from:

1. Imposing, as a condition of eligibility for Aid to the Blind, residence in the state of more than one year immediately preceding the application and five of the last nine years.
2. Instituting a citizenship requirement which excludes any citizen of the United States.

In 1965 an amendment to the federal Social Security Act had allowed states to exempt an additional \$5 of income in determining eligibility and assistance. A 1967 amendment increased the amount to \$7.50. California has implemented this exemption to AB recipients. The amendments provide for federal reimbursement of payments up to \$500 made by states for repairs to homes of AB recipients, if to do so will be more economical than other alternatives. Also provided



for in the 1967 amendments are vendor payments in behalf of persons who qualify for Aid to the Blind, and who are living in facilities which are more than boarding houses, but which are less than skilled nursing homes (intermediate care). Such homes have to meet safety and sanitation standards comparable to those required for nursing homes in a given state.

#### **IV. State Implementation**

##### **A. Organization and Administration**

The Aid to the Blind program and the Aid to the Potentially Self-Supporting Blind program are administered by the county welfare departments and are supervised by the State Department of Social Welfare. Each county welfare department accepts and approves or denies applications for AB and APSB. Applications are to be investigated promptly in accordance with regulations prescribed by the State Department of Social Welfare.

A Coordinating Council on State Programs for the Blind, consisting of the Director of the State Departments of Education, Social Welfare, Rehabilitation and Public Health, coordinates state programs and departmental programs for the adult blind. Connected with the council is a coordinating committee, made up of members chosen by the Coordinating Council, which makes special reports to the Coordinating Council. The council meets quarterly, recommending policies. An annual report is given to the Legislature by the council.

Because blindness must be legally established to obtain aid, an advisory committee of six ophthalmologists and an advisory committee of six optometrists is appointed for consultation purposes.

In administering the AB and APSB programs the State Department of Social Welfare is required to have a special division headed by a trained social worker experienced in work for the blind. This Division for the Blind may not be subordinate to other divisions of the department. When a county has 250 or more blind recipients of aid, it must create a special bureau to administer the programs, and blind persons may be selected to do the work.

Under California law, legal protections are extended to recipients of AB and APSB. These protections include:

1. Public assistance grants cannot be assigned, attached, sold, or passed through bankruptcy hearings;
2. Applicants and recipients must be allowed to inspect their documents virtually without delay;
3. The Department of Social Welfare must investigate complaints regarding county administration of AB and APSB.
4. Personnel administering the program may not dictate how any recipient spends his grant or control his manner of living, unless he is legally declared incompetent or admitted to a state hospital for care;
5. Checks to recipients cannot include any words or abbreviations indicative of aid, assistance or charity;
6. Aid cannot be denied because of a transfer of property which does not deprive the recipient of its use, enjoyment or income unless the value of the property transferred would have resulted in ineligibility;

7. Aid granted to a recipient of public assistance shall not constitute a lien upon any property of the recipient.

Prior to January 1, 1964, the beginning date of aid was usually the first of the month in which the investigation of eligibility was completed. However, the beginning date could not precede the date of application. If the investigation was extended, the beginning date was the first of the month following the expiration of 45 days after application.

Since January 1, 1964, the usual beginning date is the first of the month following the date of application. If the applicant is in immediate need when he applies and appears eligible, aid can be granted from the date he completes a declaration of his eligibility.

### **B. Eligibility**

Eligibility for AB or APSB in California is restricted to persons who are 16 years of age or over and who meet certain criteria of residence, legal blindness, and need.

Since January 1, 1964 no period of residency has been required. Before that date, applicants or recipients for whom federal participation in aid payments was available were required to have been residents of the state for five of the last nine years. Applicants or recipients who did not meet the federal requirements were required to have been residents for 10 years.

Visual impairment must come within the definition of economic blindness which means that eyesight cannot be more than one-tenth of normal vision. In general, objects can be recognized only when brought within one-tenth of the distance at which they can be recognized by persons with normal vision. Such vision in the better eye, when corrected with the best possible lens, would be recorded as 20/200 or less. Vision greater than 20/200 is not classified as blindness unless there is an equally disabling loss of side vision.

Income and other resources of an applicant must be taken into consideration in determining eligibility; however, specified amounts of income and resources are exempted from this determination. Up to \$85.00 of net monthly income plus one-half of earnings over that is exempted in figuring the non-exempt income of applicants for APSB and AB. The exemption for recipients of AB is mandated by federal law. In addition, on July 1, 1965 Congress excluded payments under Titles I and II of the Economic Opportunity Act from consideration as income in determining eligibility and aid under the AB program. On the same date, state legislation implemented for both AB and APSB a federal exemption which permitted an additional income exemption of \$5.00 a month for AB. The 1967 amendments to the Social Security Act raised this amount to \$7.50.

Both AB and APSB have limitations on the amount of real and personal property an applicant or recipient may possess. The allowable amounts for the APSB program differ from those for AB, and there are differences between the federal and state requirements with regard to AB. These property qualifications and others of the state and federal government are detailed on the following tables:

## STATE AND FEDERAL REQUIREMENTS FOR RECIPIENTS OF AID TO THE BLIND

	State requirements	Federal requirements
Age.....	16 or over	Same
Disability.....	Eyesight cannot be more than 1/10th of normal vision. Vision greater than 20/200 is not classified as blindness unless there is an equally disabling loss of side vision	Determination of blindness made by an Ophthalmologist or Optometrist
Residence.....	Residence, but no duration required	Not in excess of 5 of the last 9 years and 1 year immediately preceding application
Real property exemption.....	A home (residence), and additional property up to \$5,000 assessed value less encumbrances (must be income producing). Income from property must be applied to recipients' needs	No money limit, but any property held must be utilized
Personal property exemption.....	Maximum of \$1,500. Exemptions: Motor vehicles used for transportation, personal effects (e.g., clothing, household furniture, etc.) and funds from a scholarship	\$2,000 limit per recipient. (If person has plan for self-support additional property is exempt)
Income exemption.....	\$85 of earned income, plus $\frac{1}{2}$ of remainder	Same
	\$7.50 of income from any source	Permissive exemption
	If recipient has plan for self-support, income needed to fulfill plan is exempt	Same
Citizenship.....	None	No state requirement allowed which excludes any U.S. citizen
Institutionalization.....	1. A patient, but not an inmate, in a public institution	Same
	2. Not a patient in a public hospital with diagnosis of tuberculosis or psychosis unless 65 years of age or over	None
Obligations.....	Report all income and any change in circumstances that might affect eligibility. Refrain from assigning or transferring property to another without consideration in order to qualify for AB	Must be defined in state plan

## STATE REQUIREMENTS FOR RECIPIENTS OF AID TO POTENTIALLY SELF-SUPPORTING BLIND \*

	State requirements
Age.....	16 or over
Residence.....	Residence, but no duration required
Disability.....	Eyesight cannot be more than 1/10th of normal vision. Vision greater than 20/200 is not classified as blindness unless there is an equally disabling loss of side vision
Real and/or personal property exemption.....	Maximum of \$1,200 real and/or personal property; real property used as a home; real property of a value not in excess of \$5,000 provided it is producing income which is used toward meeting the needs of the blind person; additional real and/or personal property provided the county assessed value, less encumbrances, does not exceed \$5,000; and up to \$5,000 additional real and/or personal property if needed to implement a plan for self-support
Income.....	May retain net income up to \$1,500 within any one yearly period, plus one-half of all net income in excess of \$1,500 a year, so that this sum may be used for the purpose of achieving self-support
Citizenship.....	None
Institutionalization.....	1. A patient, but not an inmate in a public institution
	2. Not a patient in a public hospital with diagnosis of tuberculosis or psychosis unless 65 years of age or over
Obligation.....	Report all income and any change in circumstances that might affect eligibility. Refrain from assigning or transferring property to another without consideration in order to qualify for APSB

\* APSB is not a federal program; therefore, there are no federal requirements.

### **C. Benefits—Aid to the Blind**

Aid is granted on the basis of need. Every blind person who qualifies is assured of a basic needs grant which, when added to his income from all sources except earnings, will equal at least \$143.50 to cover normal living expenses of food, housing, clothing, etc.

The first \$7.50 a month income from any source and the first \$85 a month of earned income, plus one-half of all earned income in excess of \$92.50 a month, is not considered in determining the amount of the grant and are known as exempt income.

Under some circumstances an individual's needs may require more than \$143.50, depending on living arrangements and whether or not the person has special needs. Special needs may be for greater amounts to meet basic items or for items or services not included under basic needs (*e.g.*, special diets, excessive transportation costs, etc.). When the blind person's total needs (basic and special) exceed \$143.50 a month, his grant is determined by deducting any non-exempt income he has from his total need or from \$193.50, whichever is less. This means that for the recipient who has no non-exempt income, the grant will be in the amount of his actual need up to \$193.50 a month. In no case may the grant plus non-exempt income be more than \$193.50 a month unless attendant care is required. Provision is made for a grant up to \$300 per month in addition to the regular grant when the recipient requires attendant services. Payments up to \$500 per month can be made for repairs to homes of AB recipients, if to do so will be more economical than other alternatives. When eligible for either AB or APSB, an applicant or recipient is to be granted aid under that program which maximizes his grant.

Since the 1962 Federal Social Security Act amendments, there has been an increase in the provision of rehabilitative and other social services to AB recipients.

In 1964, a revolving loan fund was established for making loans to recipients of Aid to the Blind which enables them to become established in gainful employment. In addition, in 1963 provision was made under Aid to Blind whereby a blind person who has a plan for self-support is permitted such additional amounts of income or resources for a period of up to 12 months, as may be necessary to effect their plan for self-support. This was changed in 1965 to 36 months.

In 1966, provision was made for assistance to the individual with money management problems and payments under specified circumstances to a third-party payee.

### **D. Benefits—Aid to the Potentially Self-Supporting Blind**

The basic grant for APSB is exactly the same as the AB basic grant—\$143.50. In addition the recipient may retain net income up to \$1,500 within any one yearly period, plus one-half of all net income in excess of \$1,500 a year, so that this sum may be used for the purpose of achieving self-support. The special needs for APSB are the same as AB with the following exceptions: Expenditures for equipment, materials and other capital investment up to \$100 a month are deducted from gross income in computing net income, if such expenditures are required to advance a plan for self-support. Proceeds of an educational scholarship are not considered income.



A blind person may not, of course, receive both Aid to Needy Blind and Aid to the Potentially Self-Supporting Blind at the same time.

A significant change in AB and APSB occurred with the institution of the California Medical Assistance Program (Medi-Cal) on March 1, 1966. The maximum amount of grants did not increase, but recipients no longer need to expend part of their grants on medical services.

## V. Funding

In July 1963, the federal law was changed to allow the exemption of additional earned income for recipients of AB with plans for self-support. Many APSB cases were transferred to AB. Only 60 cases remained under APSB. In 1965, the 12 month period was extended to 36 months. When a recipient's 36 months expire they transfer from AB into APSB. This has increased the number of recipients to 290.

The federal government does not share in the funding of APSB because APSB recipients are allowed to retain income and resources which exceed the federal standard for AB. The state pays for 5/6ths of the grant and the county, the remaining 1/6th of the grant. Administrative costs are met entirely by the county.

Legislation passed by Congress in 1962 and broadened by subsequent amendments raised federal reimbursement from 50 to 75 percent of county administrative costs in providing specialized social services. Effective July 1, 1969, an expanded list of social services will be eligible for 75 percent federal reimbursement.

A financial participation chart for the Aid to the Blind and the Aid to Potentially Self-Supporting Blind programs are shown on the following tables:

FINANCIAL PARTICIPATION IN THE AID TO THE BLIND PROGRAM

Period covered	Maximum grant (dollars)	Ratio of participation		
		Federal (dollars)	State	County
12/ 1/62 through 11/30/63.....	174.00	43.50 per eligible person	$\frac{3}{4}$ of remainder	$\frac{1}{4}$ of remainder
12/ 1/63 through 11/30/64.....	175.00	43.50 per eligible person	$\frac{3}{4}$ of remainder	$\frac{1}{4}$ of remainder
12/ 1/64 through 11/30/65.....	177.00	43.50 per eligible person	$\frac{3}{4}$ of remainder	$\frac{1}{4}$ of remainder
12/ 1/65 through 12/31/65.....	180.00	43.50 per eligible person	$\frac{3}{4}$ of remainder	$\frac{1}{4}$ of remainder
1/ 1/66 through 11/30/66.....	183.50	50 percent	$\frac{3}{4}$ of remainder	$\frac{1}{4}$ of remainder
12/ 1/66 through 11/30/67.....	185.50	50 percent	$\frac{3}{4}$ of remainder	$\frac{1}{4}$ of remainder
12/ 1/67 through 11/30/68.....	189.50	50 percent	$\frac{3}{4}$ of remainder	$\frac{1}{4}$ of remainder
12/ 1/68 through present.....	193.50	50 percent	$\frac{3}{4}$ of remainder	$\frac{1}{4}$ of remainder

Adapted from the California State Department of Social Welfare, Form DFA, 234B (AB) (11/66)

FINANCIAL PARTICIPATION IN THE  
AID TO THE POTENTIALLY SELF-SUPPORTING BLIND PROGRAM

Period covered	Maximum grant (dollars)	Ratio of participation		
		Federal (dollars)	State	County
12/ 1/62 through 11/30/63-----	174.00	None	$\frac{1}{2}$ of grant	$\frac{1}{2}$ of grant
12/ 1/63 through 11/30/64-----	175.00	None	$\frac{1}{2}$ of grant	$\frac{1}{2}$ of grant
12/ 1/64 through 11/30/65-----	177.00	None	$\frac{1}{2}$ of grant	$\frac{1}{2}$ of grant
12/ 1/65 through 12/31/65-----	180.00	None	$\frac{1}{2}$ of grant	$\frac{1}{2}$ of grant
1/ 1/66 through 11/30/66-----	183.50	None	$\frac{1}{2}$ of grant	$\frac{1}{2}$ of grant
12/ 1/66 through 11/30/67-----	185.50	None	$\frac{1}{2}$ of grant	$\frac{1}{2}$ of grant
12/ 1/67 through 11/30/68-----	189.50	None	$\frac{1}{2}$ of grant	$\frac{1}{2}$ of grant
12/ 1/68 through present-----	193.50	None	$\frac{1}{2}$ of grant	$\frac{1}{2}$ of grant

Adapted from the California State Department of Social Welfare, Form DFA, 234 B (APSB) (11/66).

## VI. Statistics

### A. Total Subsistence and Program Expenditures for Aid to the Blind (AB) and Aid to the Potentially Self-Supporting Blind (APSB)

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures-----	*19,293	*19,683	*20,463	*21,432	*22,868
2. Total administrative expenditures*-----	2,227	2,014	1,904	1,833	2,508
State administration-----	390	305	316	252	<sup>b</sup> 56
County administration-----	1,837	1,709	1,588	1,581	1,866
County case service costs-----	n.a.	n.a.	n.a.	n.a.	586
3. Total assistance expenditures*-----	17,066	17,669	18,559	19,599	20,360
Subsistence/allowances-----	17,066	17,669	18,559	19,599	20,360
Medical care/services-----	†	†	†		

\* Does not include expenditures for medical care.

† Includes case service costs from Fiscal Years 1963-64 to 1966-67.

<sup>b</sup> Does not include unallocated special departmental programs.

† See *The California Medical Assistance Program*.

n.a. Not available.



**B. Sources of Funds for Aid to the Blind (AB) and Aid to the Potentially Self-Supporting Blind (APSB)**

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	7,531	7,446	8,935	10,133	11,451
State.....	8,270	8,663	8,151	8,031	7,829
County.....	3,492	3,569	3,347	3,263	3,553
2. Total administrative expenditures*					
Federal.....	1,245	1,125	1,056	1,047	1,439
State.....	172	138	133	111	44
County.....	\$10	751	680	675	1,025
3. Assistance expenditures					
Subsistence					
Federal.....	6,286	6,321	7,849	9,056	10,012
State.....	8,098	8,530	8,043	7,920	7,755
County.....	2,652	2,513	2,667	2,593	2,563

\* Includes case service expenditures.

**C. Recipient Count and Payments Aid to the Blind (AB) and Aid to the Potentially Self-Supporting Blind (APSB)**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Average number of monthly recipients					
AB.....	12,164	12,253	12,349	12,344	12,238
APSB.....	98	126	66	100	153
2. Fiscal year ending, number of recipients					
AB.....	12,430	12,353	12,399	12,256	12,352
APSB.....	n.a.	n.a.	n.a.	n.a.	n.a.
3. Average monthly payment per recipient					
Total—AB.....	\$130.67	\$138.05	\$142.33	\$130.79	\$135.61
—APSB.....	150.63	165.00	173.90	170.07	164.55
Subsistence—AB.....	116.53	115.91	124.70	130.79	135.61
—APSB.....	134.91	152.94	163.84	170.07	164.55
Medical care.....					

\* See *The California Medical Assistance Program*.

n.a. Not available.

## AID TO THE NEEDY DISABLED

### I. General Description

The purpose of the Aid to the Needy Disabled program, informally referred to in California as "ATD," is:

" . . . to provide financial aid . . . and social services on an individual basis to disabled persons 18 years of age and older who are in need, thereby assisting these disabled persons in achieving their maximum potential for independent living, self-support and self-care."<sup>1</sup>

### II. Program Background

In late 1950 Congress added a fourth major program to the public assistance programs of the Social Security Act. It was termed "Aid to the Permanently and Totally Disabled" (APTD). Direct administration of benefits and most decisions as to eligibility, need, and amount to be paid to recipients were left to the states. Programs were financed on a matching basis. Federal reimbursement was given to a state for three-fourths of the first \$20 plus one-half of the next \$30 of the sum of payments to recipients and payments to vendors for certain medical services. Federal reimbursement was provided for 50 percent of state-county administrative expenses. The amount of federal money to be spent was open-ended. That is, the federal government agreed to pay its share of the cost of the program without limitation. Federal reimbursement depended on the degree of participation of those states which elected to implement the program and met the federal requirements for participation.

Before the enactment of the federal program in 1950, there were a variety of services provided to the needy disabled by public agencies in the State of California; and, as of January 1957, California was one of eight states which had chosen not to participate in APTD. It was the 1957 regular session of the state legislature that passed legislation instituting a program that conformed to the standards set forth for APTD programs. As of October 1, 1957, California became a participant in the program; however, the state program was called "Aid to the Needy Disabled" (ATD).

Applications for participation in the ATD program were made by individuals to their respective county welfare department and determination of eligibility was made at the county level. The State Department of Social Welfare supervised administration of funds, kept information and statistics, established personnel standards, paid aid to recipients through the counties, reported to the appropriate federal officials, and made determinations of medical eligibility in the program. A State Social Welfare Board was appointed by the Governor to adopt such rules and regulations as were necessary to carry out the law in administration of ATD. The director of the department was given authority to appoint an advisory committee of no more than nine persons to advise him on the medical and rehabilitative aspects of the program.

<sup>1</sup> California State Department of Social Welfare, *Manual of Policies and Procedures: Public Social Services*. Sacramento: Department of Social Welfare, revised to 9/1/68, 40-101.13.

To qualify for participation in ATD a person had to be suffering from a major physical or mental impairment (not a psychosis) or a combination of both which was verifiable by medical findings and appeared reasonably certain to continue throughout his lifetime without substantial improvement. The law further provided that an applicant did not qualify unless he was either: (1) bedfast, chairbound, or in need of physical assistance without which the daily regimen could not continue; or (2) mentally or physically impaired to the extent that continuous supervision was essential. Recipients were required to: (1) have less than \$5,000 in real property; (2) have less than \$600 in personal property; (3) be at least 18 years of age; (4) be a U.S. citizen; (5) have resided in the state five of the last nine years, including the year immediately preceding application; and (6) receive inadequate support from legally responsible relatives.

The state law which established ATD dictated that the requirements for eligibility in the program be strictly interpreted; however, between 1957 and 1963 the Legislature itself significantly liberalized eligibility standards. In 1960 the definition of "disability" was changed from a condition requiring a person to have "constant and continuous care" to one which necessitated "supervision or regular assistance from another person." On September 1, 1961, state agencies were required to substitute liberal for strict interpretation of ATD laws. Effective January 1, 1962, the legal obligation of relatives for support was removed. In 1962 the amount of personal property which could be retained by a recipient was raised from \$600 to \$1200, and United States citizenship was eliminated as a qualification for participation in the program.

Between 1957 and 1963 the state, through its counties, not only provided ATD grants that met the amount for which federal reimbursement was provided, but also exceeded it in many cases. Six-sevenths of costs for which federal reimbursement was not provided were generally paid by the state; however, when recipients failed to meet county residence requirements, the state assumed all non-reimbursed costs.

Between 1957 and 1963 the major changes in the federal law (APTD) involved:

1. Adoption of a sliding scale in 1958, which provided for federal matching based on each state's per capita income and based payments on the average state cost per recipient rather than requiring computations for individual recipients.
2. Increased emphasis beginning in 1962 on personnel training and rehabilitative services, with 75 percent of the costs being paid by the federal government to those states which decided to include such services in their APTD program.
3. Expansion of federal sharing in the costs of vendor payments for certain medical services to APTD recipients:
  - a. Until 1960 a recipient's vendor payment and cash grant were added, with no special reimbursement being provided for the former.
  - b. Beginning in 1960, additional reimbursement for vendor costs was provided up to a maximum federal payment of \$9.60 per recipient.

### III. Federal Requirements

Title XIV of the federal Social Security Act provides for federal aid in the establishment and maintenance by states of programs of Aid to the Permanently and Totally Disabled. The act provides certain guidelines which a state is required to follow to qualify for federal participation. The state's program is required to:

1. Be in effect in all political subdivisions of the state;
2. Provide for a single state agency to administer or supervise the plan;
3. Provide for financial participation by the state;
4. Provide for opportunity for a fair hearing before the state agency to any individual whose claim is denied;
5. Establish and maintain personnel standards on a merit basis;
6. Provide for training and use of subprofessional staff with emphasis on employment of recipients and others of low income, and for use of volunteers in service programs;
7. Provide that the state agency will make such reports as may from time to time be required;
8. Provide reasonable standards for determining eligibility and amount of assistance;
9. In determining need, take into consideration any other income and resources of any person claiming aid (certain amount of earned income is exempt);
10. Restrict the use or disclosure of information;
11. Provide that all individuals wishing to make application for Aid to the Disabled shall have opportunity to do so and that aid shall be granted with reasonable promptness to eligible persons;
12. Provide a state agency for setting and maintaining institutional standards, if care for persons in them is included in the plan;
13. Provide a description of the services available to applicants for and recipients of aid to help them attain self-support or self-care;
14. The final determination of disability must be made by the single state agency.

In addition to the above federal requirements for positive state action, the Social Security Act contains certain prohibitions on states which wish to qualify for federal participation in the costs of APTD. States are prohibited from:

1. Extending aid to an individual claiming aid under another public assistance program (*i.e.*, OAA, AFDC, or AB).
2. Requiring residence in the state of more than one year immediately preceding application and five of the last nine years.
3. Instituting a citizenship requirement which excludes any citizen of the United States.

A 1965 federal regulation mandated that, beginning October 1, 1965, a bachelor's degree be required for persons employed as entry-level social workers or first-line supervisors. Another 1965 amendment to the Federal Social Security Act allowed states to exempt an additional \$5.00 of income in determining eligibility and assistance. A 1967 amendment increased the amount to \$7.50. California has not taken the option of extending this exemption to ATD recipients.



The 1967 amendments also provided for 50 percent federal reimbursement for repairs to recipient homes up to \$500.00. To receive federal reimbursement, repairs are required to be more economical than other means of improving the recipient's living conditions. Also provided for in the 1967 amendments are vendor payments in behalf of persons who qualify for Aid to the Needy Disabled, and who are living in facilities which are more than boarding houses, but which are less than skilled nursing homes (intermediate care). Such homes have to meet safety and sanitation standards comparable to those required for nursing homes in a given state.

#### **IV. State Implementation**

##### **A. Organization and Administration**

Each county welfare department in California accepts, denies, or approves applications for ATD in respect to financial eligibility. Supervision of counties and the determination of disability are responsibilities of the State Department of Social Welfare. The department administers the ATD program in accordance with federal and state standards, and is required by state statute to work with the California State Departments of Rehabilitation and Employment in developing plans for the orderly processing of cases which may be referred to either of these agencies.

In 1965 the power to issue rules and regulations necessary for the implementation of the program was transferred from the State Social Welfare Board to the Director of the Department of Social Welfare. Since that time the board has acted in an advisory capacity. The director or departmental referees have the additional responsibility of hearing appeals from ATD applicants and recipients regarding administrative decisions.

Prior to January 1, 1964, the beginning date of aid was usually the first of the month in which the investigation of eligibility was completed. However, the beginning date could not precede the date of application. If the investigation was extended, the beginning date was the first of the month following the expiration of 45 days after application.

Since January 1, 1964, the usual beginning date is the first of the month following the date of application. If the applicant is in immediate need when he applies and appears eligible, aid can be granted from the date he completes a declaration of his eligibility. A provision which became effective two years later (January 1, 1966) permits payments to third parties when recipients are physically or mentally unable to manage their grant.

The state has participated in the trend toward providing more services to recipients of public assistance. By January 1, 1970, it is anticipated that functional separation of determining eligibility and grant from that of providing social services will be in effect in all county welfare departments.

Under California law, legal protections are extended to recipients of ATD. These protections include:

1. Public assistance grants cannot be assigned, attached, sold, or passed through bankruptcy hearings;

2. Applicants and recipients must be allowed to inspect their documents virtually without delay;
3. Department of Social Welfare investigation of complaints regarding county administration of ATD;
4. Personnel administering the program may not dictate how any recipient spends his grant or control his manner of living, unless he is legally declared incompetent or admitted to a state hospital for care;
5. Checks to recipients must not include any words or abbreviations indicative of aid, assistance or charity;
6. Aid cannot be denied because of a transfer of property which does not deprive the recipient of its use, enjoyment or income unless the value of the property transferred would have resulted in ineligibility;
7. Aid granted to a recipient of public assistance shall not constitute a lien upon any property of the recipient.

### B. Eligibility

The foregoing qualifications and others of the state and national government are detailed on the following table:

STATE AND FEDERAL REQUIREMENTS FOR RECIPIENTS  
OF AID TO THE NEEDY DISABLED

	State requirements	Federal requirements
Age.....	18 or over	Same
Disability.....	A permanent physical and/or mental disability which: <ol style="list-style-type: none"> <li>1. Is a major handicap, and</li> <li>2. Prevents the person from engaging in a useful occupation</li> </ol>	Permanent and total disability
Residence.....	None for those disabled in California. For others: 3 of the past 9 years, including 1 year just before application*	Not in excess of 5 of the past 9 years and 1 year immediately preceding application
Real property exemption.....	A home (residence), and additional property up to \$5,000 assessed value less encumbrances (must be income producing). Income from property must be applied to recipient's needs	No money limit, but any property held must be utilized
Personal property exemption.....	Maximum of \$1,200. Exempt: Motor vehicle used for transportation and personal effects (e.g., household furniture, clothing, etc.)	\$2,000 limit per recipient
Income exemption.....	First \$20 of earned income plus $\frac{1}{2}$ of the next \$60.00	Same
	\$85.00 of the net EOA earnings plus $\frac{1}{2}$ of remainder	Same
	Not implemented	Exempt if state chooses: <ol style="list-style-type: none"> <li>(1) \$7.50 of income from any source</li> <li>(2) Up to 36 months of income necessary to a state approved plan of rehabilitation</li> </ol>
Citizenship.....	None	No state requirement allowed which excludes any U.S. citizen
Institutionalization.....	A patient, but not an inmate, of a public institution or institutions for tuberculosis or the mentally ill	Same
Obligations.....	Report all income and any change in circumstances that might affect eligibility	Must be defined in state plan

\* A preliminary injunction suspended all California residence requirements pending a decision by the U.S. Supreme Court in *Burns, et al. v. Montgomery, et al.*



Eligibility is granted to residents of California who meet certain criteria of need and disability.

Legislation which was passed in 1963 and became effective on January 1, 1965, has substantially liberalized California's requirements for eligibility to participate in ATD. A disability which necessitates continual supervision is no longer required. Instead, a disability which substantially precludes a person from engaging in a useful occupation is sufficient. Persons who become disabled while residing in California are no longer required to meet residency requirements, and the general residency requirements have been reduced from five to three years of the last nine years.

Although the limitation on real property has remained at \$5,000.00 of assessed value of income-producing property and that on personal property at \$1,200.00, the amount of exempt income which is not considered in determining the amount of grant has been liberalized. As a result of legislation which took effect on July 1, 1965, certain payments under Title I and Title II of the Economic Opportunity Act (EOA) are excluded as income. Effective October 1 of that year, provision was made for the exemption of earned income to a maximum of \$50.00.

### **C. Benefits**

Aid to the Needy Disabled provides a grant which, in addition to the recipient's income, will provide a total income equal to the basic state ATD standard. This standard covers basic needs common to all disabled people, plus the amount required to meet certain designated special needs. Basic needs include food, clothing, and shelter with the amount of grant dependent upon the recipient's living arrangements. Special needs may be for greater amounts to meet basic items or for items or services not included under basic needs (*e.g.*, restaurant meals and excessive transportation costs, etc.).

When required for attendant services, there is available, due to legislation effective as of May 1, 1963, up to \$300 per month per recipient. In its 1968 General Session, the California Legislature authorized payments up to \$300 a month to ATD recipients who are mentally retarded and in a private institution caring for more than six persons.

Although there is no maximum placed on the amount of grant to each recipient, there are ceilings on the amount permitted for each of the allowable basic and special needs. Each recipient's basic and special needs are met, up to the amount allowable, so long as the average state grant does not exceed the statutory maximum. Since January 1, 1964, there has been a provision in the law for an annual cost-of-living increase (or decrease) in the overall maximum.

If necessary, to prevent the average grant from exceeding the statutory maximum, individual payments for special needs are to be reduced accordingly. In order to forestall a grant reduction, the Legislature in 1968 raised the statutory maximum for fiscal 1967-68 by \$2.25 and for fiscal 1968-69 by \$4.75 to a statewide average of \$120.25 per month per recipient. (The statewide average of \$120.25 was effective December 1, 1968 and includes the annual cost-of-living increase.) Because the \$4.75 increase is only effective for one year, the statewide average will be \$115.50 effective July 1, 1969.

The projected increases in these years were largely due to higher costs of providing in-home attendant care. In an attempt to curb these costs, the 1968 Legislature enacted legislation which required counties to provide the staff or contract for such care, thus increasing federal participation from 50 percent to 75 percent (85 percent for 1968-69) of the costs.

From the standpoint of recipients, probably the most significant change since 1963 was the institution of the California Medical Assistance Program (Medi-Cal) on March 1, 1966. The maximum amount of grants did not increase, but recipients no longer needed to expend part of their grants on medical services. Some ATD recipients receiving an attendant care allowance became eligible for Home Health Aide service provided under Medi-Cal, and they are gradually being transferred to that program.

Since the 1962 federal Social Security Act amendments, there has been an increase in the provision of rehabilitative and other social services to ATD recipients.

## **V. Funding**

The federal government assumes a substantial portion of APTD (ATD) grants to recipients. In fiscal 1963-64 the exact amount reimbursed by the federal government was based on a complex formula which increased the federal contribution as the state's expenditure per recipient went up and/or its per capita income went down. The federal government paid 29/35ths of the first \$35, 50 to 65 percent (depending upon the state's per capita income) of the next \$35 for combined grant and vendor payments for medical care, plus 50 to 80 percent for up to \$15 of additional vendor payments. This resulted in maximum federal reimbursement of \$54 to \$63.75 per grant, depending on the state's per capita income. When applied to California, this formula resulted in the state receiving a maximum of \$43.50 a month for grant payments per eligible recipient from October 1, 1962 through December 31, 1965.

On January 1, 1966, the basis for figuring the federal share of the financing of ATD was changed. Since then, the state has received reimbursement for 50 percent of the average monthly payment for ATD recipients. The new formula was provided by the federal government as an option to those states which implemented a medical assistance program under Title XIX of the Social Security Act. The new formula has resulted in an increased proportion of federal funds in the total expenditures for ATD in the state.

In addition to the reimbursement for payments to recipients, the federal government provides 50 percent reimbursement for ordinary state and county administrative costs, including case work services related to providing public assistance payments to recipients.

Legislation passed by Congress in 1962 and broadened by subsequent amendments raised federal reimbursement to 75 percent of county administrative costs in providing specified rehabilitative and social services to recipients. Only counties with an approved plan for providing these specialized services receive 75 percent rather than 50 percent reimbursement.

The following table shows the federal-state-county sharing formula from 1963 to the present.

**CHART OF FINANCIAL PARTICIPATION IN THE  
AID TO THE NEEDY DISABLED PROGRAM \***

Period covered	Maximum statewide average per month per fiscal year	Ratio of participation		
		Federal share	State share	County share
10/1/62 through 11/30/64	\$100 per average recipient	\$43.50 per eligible recipient	94 of the remainder	14 of the remainder
12/1/64 through 11/30/65	\$101 per average recipient	\$43.50 per eligible recipient	94 of the remainder	14 of the remainder
12/1/65 through 12/31/65	\$103 per average recipient	\$43.50 per eligible recipient	94 of the remainder	14 of the remainder
1/1/66 through 11/30/66	\$108.50 per average recipient	50 percent	94 of the remainder	14 of the remainder
12/1/66 through 6/30/67	\$108.50 per average recipient	50 percent	94 of the remainder	14 of the remainder
7/1/67 through 11/30/67	\$110.75 per average recipient	50 percent	94 of the remainder	14 of the remainder
12/1/67 through 6/30/68	\$113.75 per average recipient	50 percent	94 of the remainder	14 of the remainder
7/1/68 through 11/30/68	\$116.25 per average recipient	50 percent	94 of the remainder	14 of the remainder
12/1/68 through 6/30/69	\$120.25 per average recipient	50 percent	94 of the remainder	14 of the remainder
7/1/69 through 11/30/69	\$115.50 per average recipient	50 percent	94 of the remainder	14 of the remainder

\* Adapted from the California State Department of Social Welfare, Form DFA 234D (11/66).

## VI. Statistics

### A. Total Subsistence and Program Expenditures for Aid to the Disabled (ATD)

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	*54,943	*83,855	*117,934	*154,569	*198,683
2. Total administrative expenditures*.....	8,403	12,833	16,710	21,989	31,542
State administration.....	1,085	1,415	1,671	1,859	521
County administration.....	7,318	11,418	15,039	20,130	7,738
County case services costs.....	n.a.	n.a.	n.a.	n.a.	23,283
3. Total assistance expenditure*.....	46,540	71,022	101,224	132,580	167,141
Subsistence/allowances.....	46,540	71,022	101,224	132,580	167,141
Medical care/services.....	†	†	†	-----	-----

\* Does not include expenditures for medical care.

• Includes case service costs from fiscal year 1963-64 to 1966-67.

† Does not include unallocated special departmental programs.

† See *The California Medical Assistance Program*.

n.a. Not available.

**B. Sources of Funds for Aid to the Disabled (ATD)**

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	26,323	37,344	53,603	73,577	98,078
State.....	21,919	35,506	49,461	61,875	75,454
County.....	6,701	11,005	14,870	19,117	25,151
2. Total administrative expenditures*					
Federal.....	4,803	6,986	9,180	12,121	18,423
State.....	473	662	775	867	439
County.....	3,127	5,185	6,755	8,998	12,680
3. Assistance expenditures					
Subsistence					
Federal.....	21,520	30,358	44,423	61,453	79,655
State.....	21,446	34,844	48,686	61,008	75,015
County.....	3,574	5,820	8,115	10,119	12,471

\* Includes case service expenditures.

**C. Recipient Count and Payments—Aid to the Disabled (ATD)**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Average number of monthly recipients.....	41,813	61,464	83,355	104,126	123,827
2. Fiscal year ending, number of recipients.....	50,402	74,850	91,160	116,842	129,026
3. Average monthly payment per recipient					
Total.....	\$113.92	\$118.26	†\$122.52	\$105.68	\$112.60
Subsistence.....	93.71	98.80	104.08	105.68	112.60
Medical care.....					

† Includes Medi-Cal cash grant payments.

\* See *The California Medical Assistance Program*.



## AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)

### I. General Description

The basic purpose of AFDC is:

"... to provide financial aid and medical assistance and social services for children who lack financial support and care; to protect and preserve the family unit as the key to sound growth and development of children; to rehabilitate or to provide the opportunity for rehabilitation of the family whenever possible; and to make available to children who cannot live in their own homes, the kind of care and treatment best suited to their needs."<sup>1</sup>

### II. Program Background

The present AFDC program for family groups had its beginning in the 1935 Federal Social Security Act. In the original act the program was referred to as "Aid to Dependent Children" (ADC). Under the ADC program, federal funds were available to help the states support needy children deprived of normal parental support because of the death, incapacity, or absence from home of the parent.

Under the matching formula in the act, federal reimbursement to the state was \$6 of the first \$18 per month spent by the state for the support of a single child, \$4 of the first \$12 spent for the support of each additional child, plus one-third of state administrative costs. The amount of federal money to be spent in the program after the first year was open-ended. That is, the federal government agreed to pay its share of the cost of the program without limitation. The cost depended on the degree of participation of those states which elected to implement the program and met the federal requirements for participation. On May 25, 1937, Governor Frank F. Merriam of California approved an act that conformed the state's program for family groups with the federal requirements; however, the California program was known as "Aid to Needy Children" (ANC) rather than "Aid to Dependent Children" (ADC).

The state gave some aid to needy children in boarding homes and institutions (ANC/BHI) for which no federal reimbursement was provided until August 1961. (Even after that date less than five percent of the ANC/BHI recipients became "federal children," i.e., those for whom the federal government gave partial reimbursement for funds expended.)

Applications for participation in the program were made by individuals to their respective county welfare department, and determination of eligibility was made at the county level. The State Department of Social Welfare supervised the administration of funds, kept information and statistics, established personnel standards, paid aid to recipients through the counties and reported to the appropriate federal officials. A State Social Welfare Board was appointed by the Governor to adopt such rules and regulations as were necessary to carry out the law in the administration of ANC.

<sup>1</sup> California State Department of Social Welfare, *Manual of Policies and Procedures, Public Social Services*. Sacramento: Department of Social Welfare, 40-101-15, effective April 1, 1967.

The federal Social Security Act of 1935 provided for federal reimbursement to states only for children who met certain standards of need. The major changes in the federal law between 1935 and 1963 involved:

1. Increases in the amount and ratio of federal participation:
  - a. By 1958, federal funds provided from \$20.50 to \$22.50, depending on a state's per capita income, of the first \$30.00 of a recipient's grant.
  - b. By 1962, federal funds provided 50 percent of most state administrative costs and 75 percent of certain others involving primarily the provision of services to recipients.
2. Changes in eligibility requirements:
  - a. In 1956, the requirement that ADC children live with certain immediate relatives was expanded to include first cousins, nieces, and nephews.
  - b. In 1961 Congress authorized payments to help pay for foster care of an ADC child removed from an unsuitable home by court order.
3. Provision for inclusion within the grant of vendor payments for certain medical costs (see *The California Medical Assistance Program*, Program Background, PAMC).
4. Extension of aid to the mother beginning 1950 (AFDC) and in 1962 to the unemployed father of a child on ADC (AFDC-U).

California's definition of eligible children conditions also changed several times between 1935 and 1963, not only reflecting federal expansions but also state reduction of waiting period from three years to 90 days for children deserted by parents.

### III. Federal Requirements

All state plans are required to meet the following conditions of the federal Social Security Act to establish an Aid to Dependent Children program, and these provisions are to be kept in force in order to receive the federal participating grant:

1. Be in effect in all political subdivisions of the state;
2. Provide for a single state agency to administer the plan;
3. Provide for financial participation by the state;
4. Provide an opportunity for a fair hearing before the state agency to any individual whose claim is denied;
5. Establish and maintain personnel standards on a merit basis;
6. Provide, effective July 1, 1969, for training and use of paid sub-professional staff with emphasis on employment of recipients and other persons of low income and for use of volunteers in service programs;
7. Provide that the state agency will make such reports as the secretary may from time to time require;
8. Provide reasonable standards for determining eligibility and amount of assistance;
9. In determining need, take into consideration any other income and resources of any child claiming aid (certain amount of income is exempt);



10. Restrict the use or disclosure of information;
11. Provide that all individuals wishing to make application for Aid to Families with Dependent Children shall have the opportunity to do so;
12. Provide for prompt notice to appropriate law enforcement officials of a child who has been deserted or abandoned;
13. Provide no aid to an individual during any periods he is receiving aid under any other program;
14. Provide a description of the services available to maintain and strengthen family life;
15. Provide for a program of welfare and related services coordinated with other state services for child welfare and excluding residency requirements of over one year for eligibility.<sup>2</sup>

No major changes were made by Congress in the administration of the AFDC program until 1967; however, a 1965 federal regulation mandates that, beginning October 1, 1965, a bachelor's degree be required for persons employed as entry-level social workers or first-line supervisors.

In 1967, Congress increased federal matching for controlled payments to vendors and third parties in cases of recipient inability to manage funds to 10 percent of AFDC recipients; however, states can exclude from this limitation persons in the Work Incentive Program (WIN)<sup>3</sup> and those recipients who refuse to accept, register for, or participate in employment or training programs.

Since July 1, 1968, states or their agents (*i.e.*, counties) have been required to: 1) refer appropriate recipients to the local office of the State Department of Employment for participation in WIN; and 2) provide a comprehensive program of family and child welfare services. After January 1, 1969, states will be required to establish an administrative unit (eligible for 50 percent reimbursement of costs) for establishing paternity and obtaining support for children from absent parents.

Dependent children are defined as those children under the age of 18 who had been deprived of parental support because of the death, continued absence, unemployment, or physical or mental incapacity of a parent. Children 18 to 21 who are members of AFDC families are also considered "dependent children" if they are in school or in a vocational training program. Such children can receive aid for which federal reimbursement is provided if they are living with a parent or parents, grandmother, grandfather, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, niece, or nephew. Residence in a state-authorized foster family home or child-care institution does not disqualify such children from being recipients of AFDC benefits, although they must have been eligible before they were placed in a home or institution by a court.

Congressional action taken in 1965 permitted states to disregard \$50 a month of earned income in determining the eligibility for AFDC of a child under 18. A maximum of \$150 per family unit was placed on such exemptions, and they were permitted only for children attending a school or engaged in vocational or technical training. These provisions

<sup>2</sup> See *Family and Children Services*.

<sup>3</sup> This program was passed in 1967 (see *Work Incentive Program*)

were superseded by more generous ones contained in the 1967 amendments to the federal Social Security Act.

Since July 1, 1968, states have been *permitted* under the 1967 amendments to exempt all income of children under 21 who are full- or part-time students but not employed full time. Other than those in WIN, the first \$30 and one-third of the remaining income can be exempted for those individuals whose needs are taken into consideration in determining the AFDC payment. States are *required* to adopt the foregoing standards by July 1, 1969.

Further extensions of eligibility were made by the 1967 amendments. They 1) extend federal participation in aid to children who, since April 1, 1961, have met eligibility requirements for AFDC during the six-month period before they were or are placed in foster homes by a court; and 2) permit 30-day emergency AFDC payments to migrant and other needy children and their parents, regardless of whether they met the usual eligibility requirements regarding loss of parental support. The 30-day emergency payment program has not been implemented in California.

The 1967 amendments also tighten certain eligibility requirements. Further payments with federal participation are prohibited to unemployed mothers in families with two parents (AFDC-U). After January 1, 1968, fathers must have been unemployed for a minimum of 30 days before receipt of aid, and 1) have at least six quarters of work in a 13-calendar-quarter period ending within one year before application for aid, or 2) within one year preceding application, have been qualified for or received unemployment compensation. States with more liberal requirements are given until July 1, 1969 to comply with this change. An otherwise eligible father may continue to receive assistance as long as he does not refuse to accept a bona fide offer of employment or vocational training and maintains current registration with the local employment office. Federal reimbursement cannot be claimed for assistance paid to a family during any period of less than a month when unemployment insurance is paid.

Another amendment to the act established a ceiling on federal participation based on the number of AFDC children under 18 in relation to the total population under 18 as of January 1, 1968. Congress has since postponed the effective date of the AFDC "freeze" to July 1, 1969.

Partial federal reimbursement is provided for aid payments to recipients; however, a ceiling is placed on the amount subject to reimbursement that can be paid to any recipient. The exact amount of the aid payment is determined by the state which can either pay more or less than the maximum for which federal reimbursement is provided.

The 1962 session of the United States Congress enacted legislation providing 75 percent federal reimbursement for development of increased services to AFDC and other public assistance recipients. The principal emphasis of the services is to assist in the rehabilitation of public assistance recipients and to reduce the degree of their dependency. Similar amendments passed since 1962 have broadened the scope of such services.

The 1967 amendments provide for reimbursement of 50 percent of state costs up to \$500 for repairs on homes of AFDC recipients, pro-

vided such repairs are more economical than alternative actions. Beginning January 1, 1968, federal matching funds were increased up to \$100 of cost of care for federally eligible AFDC recipients in foster homes. By July 1, 1969, all states are required to have adjusted their AFDC standards in light of cost-of-living changes since enactment of the standards.

#### **IV. State Implementation**

##### **A. Organization and Administration**

The 1963 Legislature changed the name of California's program from "ANC" to "AFDC"; however, the federal administrative responsibilities for the program were not changed and have not changed since that time. Each county welfare department accepts and approves or denies applications for AFDC in accordance with federal and state standards. Supervision of counties is the responsibility of the State Department of Social Welfare.

In 1965, the power to issue rules and regulations necessary for the implementation of the program was transferred from the State Social Welfare Board to the Director of the State Department of Social Welfare. Since that time, the board has acted in an advisory capacity. The director or departmental referees have the additional responsibility of hearing appeals from AFDC applicants and recipients regarding administrative decisions.

During 1963, the state responded to 1962 congressional legislation by providing increased support for social services. The state's administrative provisions were revised to qualify for 75 percent federal reimbursement. Qualifying conditions included:

1. A caseload limit of 60 priority-need cases;
2. A supervisor-worker ratio of 1 to 8 (1 to 5 by June 30, 1967);
3. Assignment of best qualified staff to clients with priority need;
4. In-service training to staff;
5. Community planning to develop cooperative or contractual arrangements with other agencies for such services as employment counseling and special education;
6. Development of complementary resources to aid the caseworker;
7. Provision for consultative services (*e.g.*, legal, medical, educational, psychological, etc.);
8. Coordination of the AFDC and Child Welfare programs of adoptions, protection, day care, etc.;

Under California law, legal protections are extended to recipients of AFDC. These protections include:

1. Public assistance grants cannot be assigned, attached, sold, or passed through bankruptcy hearings.
2. Applicants and recipients must be allowed to inspect their documents virtually without delay.
3. The Department of Social Welfare must investigate complaints regarding county administration of AFDC.
4. Personnel administering the program may not dictate how any recipient spends his grant or control his manner of living, unless he is legally declared incompetent or admitted to a state hospital for care.



5. Checks to recipients cannot include any words or abbreviations indicative of aid, assistance or charity.
6. Aid cannot be denied because of a transfer of property which does not deprive the recipient of its use, enjoyment, or income unless the value of the property transferred would have resulted in ineligibility.
7. Aid granted to a recipient of public assistance shall not constitute a lien upon any property of the recipient.

Prior to January 1, 1964, the beginning date of aid was usually the first of the month in which the investigation of eligibility was completed. However, the beginning date could not precede the date of application. If the investigation was extended, the beginning date was the first of the month following the expiration of 45 days after application.

Since January 1, 1964, the usual beginning date is the first of the month following the date of application. If the applicant is in immediate need when he applies and appears eligible, aid can be granted from the date he completes a declaration of his eligibility.

### **B. Eligibility**

Before 1964 eligibility was granted to children under 16 years of age—and their mothers—who had sustained a loss of parental support due to death; physical or mental incapacity; or absence from home due to divorce, desertion, separation, incarceration, or deportation. Children who were 16 or 17 years of age were also eligible if they were in school, were physically or mentally disabled, or were employed and contributing to their family or education.

Since February 1, 1964, loss of parental support resulting from unemployment has rendered children and their unemployed fathers eligible for public assistance (AFDC-U). The 1965 Legislature provided that AFDC benefits be provided for otherwise eligible persons until age 21 if in school or training.

Until April 1968, a parental residence requirement of one year applied unless a child was born within the state or established his own residence by physical presence.

A waiting period of three months is required before a deserted child is eligible for assistance in the absence of a divorce or other legal action. A child relinquished for adoption is eligible for AFDC if he was receiving AFDC at the time of relinquishment or subsequently found to be unplaceable for adoption.

Each recipient family is allowed to retain real property up to \$5,000 assessed value less encumbrances and, with numerous exemptions, \$600 of personal property. From September 1965 until January 1968 any payment under the Economic Opportunity Act was exempted from consideration as income. This exemption and other provisions of any other law disregarding earned income were overridden by the new exemptions contained in the 1967 amendments. These amendments exempt the first \$30 of earned income and one-third of the remainder from consideration as income effective January 1, 1968.

Since October 1965, 50 percent of earned income of each child up to \$50 per month with a maximum of \$150 per family is exempted. Effective July 1, 1969 this exemption will be superseded by a more liberal exemption required by the 1967 amendments.

STATE AND FEDERAL REQUIREMENTS FOR RECIPIENTS  
OF AID TO FAMILIES WITH DEPENDENT CHILDREN

Program	Age of children		Parental support		Residence	
	State	Federal	State	Federal	State <sup>1</sup>	Federal
AFDC/FG (Sole-supporting parent—usually the mother)	Under 16 Youth: 16 to 18 and a. in school, or b. disabled, c. employed and contrib- uting to the family, or ap- plying his earnings to a county approved plan for education or employment. 18 to 21 and regularly at- tending school or a training program.	Under 18 Youth: 18-21 and in school or vocational education. 16 through 20 year olds who do not meet the above con- ditions must apply for or accept employment or train- ing as a condition for re- maining in the family bud- get unit.	Child deprived because of parental death, physical or mental incapacity, contin- ued absence from the home, i.e., divorce, and separation or desertion that has en- dured three months.	Child deprived because of parental death, physical or mental incapacity, or con- tinued absence from the home.	None for child born in the state 1 year preceding applica- tion for parents 3 month waiting period for deserted child	No limit which exceeds 1 year immediately preceding application for child or for parent if child born within that time.
AFDC-U (Unemployed parent)	Same as above	Same as above	Parent must be unemployed (i.e., generally employed less than 152 hrs. a month).	Father unemployed for 30 days, not receiving unem- ployment insurance, and has connection with the labor force.	Same as above	Same as above
AFDC/Bill (Child not resid- ing with parent)	Under 16 to 16-18 and a. in school, or b. disabled, or c. employed and contri- bute to family 18-21 and in school or in a training program.	Same as above except for 16 through 20 year olds (em- ployment or training re- quirement) for inclusion in the family budget unit <i>not</i> applicable to Bill.	Child deprived because of parental death, incapacity, continued absence from home, i.e., divorce, and sep- aration and desertion that has endured three months or relinquishment for adop- tion.	Children, (a) placed in fos- ter care after April 30, 1961 by court order or (b) who are eligible for (but not nec- essarily receiving) assistance within six months prior to court proceedings or in month prior to removal from home of relative.	Same as above	Same for federally eligible children.

Program	Property exemption		Income exemption		Obligations	
	State	Federal	State	Federal	State	Federal
AFDC/TG (Sole-supporting parent <sup>1</sup> —usually the mother)	Real Property: Up to \$5,000 assessed value less encumbrances of combined holdings of parent or child.  Personal property: Up to \$600 per family (numerous exemptions).	Exempts home, personal effects, automobile, and income producing property, plus an additional \$2,000 in property reserves. (The above constitutes the outside limits.)	Effective 7/1/69  Effective 7/1/68  Effective 7/1/69  Not implemented	a. all earned income of full- or part-time student not working full time b. excluding (a), first \$30 of earned income plus $\frac{1}{3}$ of remainder c. (optional) set aside portion of income for future needs of child. d. (optional) \$5 of any type of income.	Parent must: a. cooperate in enforcing absent parent's support responsibilities b. seek and accept reasonable employment or training opportunities c. provide eligibility information and take steps to produce income.	a. Same.  b. Same  c. Same
AFDC-U (Unemployed parent)	Same as above	None	Same as above	Same as above	Same as above	Same
AFDC/BIH (Child not residing with parent)	Same as above	Same as above	Same as above	a. Same as above b. Not applicable c. Same as above d. Same as above	a. Same as above b. Not applicable c. Same as above	a. Same b. Same c. Same

<sup>1</sup> A preliminary injunction suspended all residence requirements, pending a decision by the U.S. Supreme Court in *Burns, et al. v. Montgomery, et al.*  
<sup>2</sup> The term "parent" refers to a parent, grandparent, step-parent, sibling, step-sibling, uncle, aunt, first cousin, niece, or nephew at whose residence the child is living.



The preceding table shows the existing state and federal requirements for eligibility in AFDC.

### C. Benefits

Within maximum limits, the AFDC grant is based on the recipient's total budgetary needs, minus any income he earns. The amount of children's earnings, which is set aside for specific educational or occupational plans, is *not* subtracted from the grant.

Since 1963, there has been an ever-increasing emphasis on programs designed to train personnel, protect children, and rehabilitate parents.

As a result of the 1967 amendments, recipients are allowed up to \$500 for home repair if to do so would be more economical than other alternatives.

From the standpoint of recipients, probably the most significant change since 1963 was the institution of the Public Assistance Medical Care Program (Medi-Cal) on March 1, 1966. The maximum amount of grants did not increase, but recipients no longer needed to expend part of their grants on medical services.

Changes in the maximum state payments permitted are reflected in the following tables.

#### AID TO FAMILIES WITH DEPENDENT CHILDREN—FAMILY BUDGET UNITS (AFDC/FG and AFDC/U) \*

(Maximum State Participation Base for Recipient Grants<sup>1</sup>)

Period 10/1/62 through 12/31/65		
Children	1 adult (dollars)	2 adults (dollars)
1.....	145.00	162.00
2.....	168.00	185.00
3.....	215.00	232.00
4.....	256.00	273.00
5.....	291.00	308.00
6.....	320.00	337.00
7.....	343.00	360.00
8.....	360.00	377.00
9.....	371.00	388.00
Plus \$5 for each additional child.		
Period 1/1/66 to present		
Children	1 adult (dollars)	2 adults (dollars)
1.....	148.00	166.00
2.....	172.00	191.00
3.....	221.00	239.00
4.....	263.00	282.00
5.....	300.00	318.00
6.....	330.00	349.00
7.....	355.00	373.00
8.....	373.00	392.00
9.....	386.00	404.00
10.....	392.00	411.00
11.....	399.00	417.00
12.....	405.00	424.00
13.....	412.00	430.00
14.....	418.00	437.00
Plus \$6 for each additional child.		

\* Adapted from California State Department of Social Welfare, Form DFA 234C (6/67).

<sup>1</sup> Any amount paid over maximum state base is county supplemental aid.

AID TO FAMILIES WITH DEPENDENT CHILDREN  
BOARDING HOMES AND INSTITUTIONS (AFDC/BHI) \*

Period covered	Basis of maximum state participation <sup>1</sup>	
	Federally eligible children	Non-federally eligible children
1/1/62 through 3/31/63.....	\$80.00 per month per child	An average of \$80 per child for each month
4/1/63 through 12/31/65.....	An average of \$80 per	child for each month
1/1/66 to 11/12/68.....	An average of \$80 per	child for each month
11/13/68 to present.....	An average of \$100 per child per month	An average of \$80 per child per month

\* Adapted from California State Department of Social Welfare, Form DFA 234C (6/67).

<sup>1</sup> Any amount paid over and above base is county supplemental aid.

## V. Funding

The federal government assumes a substantial portion of the costs of AFDC. In 1963-64, the exact amount was based on a complicated formula which increased the federal contribution, within limits, as a state's expenditure per recipient went up or its per capita income went down. The formula for all recipients, adults and children, was as follows: 14/17ths of the first \$17 a month, plus 50 to 65 percent (depending on the state's per capita income) of the next \$13 for combined grant and vendor payment. This resulted in a limit to federal contributions of \$20.50 to \$22.00 of the first \$30.00 paid recipients.

Vendor payments (medical) and cash payments were combined in figuring the total payment being made to recipients. The state received no reimbursement for that portion of assistance payments which exceeded \$30.00 a month per recipient. Of that portion of the payment which was not reimbursed by the federal government, the state paid 67½ percent and the county 32½ percent.

AID TO FAMILIES WITH DEPENDENT CHILDREN (FAMILY GROUPS)  
CHART OF FINANCIAL PARTICIPATION \*

Period 10/1/62 through 12/31/65	Period 1/1/66 to present
Federal share: \$17.50 for each federal adult \$19.00 for each federal child	Federal share: 50 percent
State share: 67.5 percent of remainder	State share: 67.5 percent of remainder
County share: 32.5 percent of remainder	County share: 32.5 percent of remainder

AID TO FAMILIES WITH DEPENDENT CHILDREN  
BOARDING HOMES AND INSTITUTIONS †  
Chart of Financial Participation

Period	Federal share	State share	County share
1/1/62 through 3/31/63...	\$19 for each federally eligible child	67½ percent of remainder	32½ percent of remainder
4/1/63 through 12/31/65...	\$19 for each federally eligible child	67½ percent of remainder	32½ percent of remainder
1/1/66 to present.....	50 percent of the average payment for federal children	67½ percent of remainder	32½ percent of remainder

\* Adapted from California State Department of Social Welfare, Form DFA 234C (6/67).

† Adapted from California State Department of Social Welfare, Form DFA 234C (BHI), (11/65).

The preceding tables show the degree of federal, state, and county participation during the period from 1963 to the present.

In addition to partial reimbursement for aid to recipients, the federal government provided 50 percent reimbursement for ordinary administrative costs, including case work services related to providing public assistance payment to recipients.

Legislation, passed by Congress in 1962 and broadened by subsequent amendments, raised federal reimbursement to 75 percent of county administrative costs in providing specified rehabilitative services to AFDC recipients. Only counties with an approved plan for providing specialized services received 75 percent rather than 50 percent reimbursement.

On January 1, 1966, the basis for computing the federal share of the financing of AFDC was changed. A new formula was provided by the federal government as an option to those states which implemented a medical assistance program under Title XIX. The new formula has resulted in an increase in the proportion of federal funds in the total expenditures for AFDC in the state. Another increase was due to inclusion of federally covered AFDC/BHI recipients in the total number of recipients, a move which has more than doubled the average amount of federal money received for the approximately 10 percent of California's AFDC/BHI recipients who are eligible for it.

Effective July 1, 1968, an amendment to the Federal Social Security Act set a limitation on federal financial participation in the AFDC program; however, the limitation has been postponed by Congress until July 1, 1969.

Effective July 1, 1969, an expanded list of social services for which 75 percent federal reimbursement is permitted is to become compulsory for states receiving federal reimbursement for AFDC. States, which elect to adopt the expanded program of services during fiscal 1968-69, will be reimbursed for 85 percent of their costs. California is eligible for this increased federal participation.

## VI. Statistics

### A. Total Subsistence and Program Expenditures for Aid to Families With Dependent Children (AFDC)

(Includes FG, U, and BHI—in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	*263,563	*337,776	*404,738	*487,503	*566,359
2. Total administrative expenditures <sup>a</sup> .....	40,756	56,838	69,295	85,982	111,745
State administration.....	1,899	2,621	2,945	3,025	<sup>b</sup> 1,471
County administration.....	38,857	54,217	66,350	82,957	21,013
County case service costs.....	n.a.	n.a.	n.a.	n.a.	89,261
3. Total assistance expenditures <sup>a</sup> .....	222,807	280,938	335,443	401,521	454,614
Subsistence/allowances.....	222,807	280,938	335,443	401,521	454,614
Medical care/services.....	†	†	†	-----	-----

\* Does not include expenditures for medical care.

† See *The California Medical Assistance Program*, Part VI, Statistics.

<sup>a</sup> Includes case service costs from fiscal years 1963-64 to 1966-67 in county administration.

<sup>b</sup> Does not include unallocated special departmental programs.

n.a. Not available.

## B. Sources of Funds for Aid to Families With Dependent Children (AFDC)

(Includes FG, U, and BHI—in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	115,182	148,076	182,627	232,638	277,251
State.....	88,016	109,828	126,623	141,636	158,439
County.....	60,365	79,872	95,488	113,229	130,669
2. Total administrative expenditures*					
Federal.....	25,166	33,619	41,221	50,357	70,611
State.....	907	1,265	1,405	1,417	941
County.....	14,683	21,954	26,668	34,178	40,193
3. Assistance expenditures					
Subsistence					
Federal.....	90,016	114,457	141,405	182,281	206,640
State.....	87,109	108,563	125,217	140,189	157,498
County.....	45,682	57,918	68,820	79,051	90,476

\* Includes case service expenditures.

## C. Recipient Count and Payments—Aid to Families With Dependent Children (AFDC)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Average number of monthly participants					
FG and U.....	409,727	524,451	607,820	705,141	786,654
BHI.....	17,053	18,760	20,829	23,684	26,940
2. Fiscal year ending, number of recipients					
FG and U.....	474,761	559,494	644,616	760,454	815,621
BHI.....	18,312	18,968	21,239	24,182	28,005
3. Average monthly payment per recipient					
FG and U—total.....	\$42.71	\$44.69	\$42.94	\$44.14	\$44.69
Subsistence.....	42.71	41.72	42.94	44.14	44.69
Medical care.....					
BHI—total.....	89.25	94.27	96.30	103.02	108.30
Subsistence.....	86.58	90.31	96.30	103.02	108.30
Medical care.....					

\* See *The California Medical Assistance Program*.

## CUBAN REFUGEE PROGRAM

### I. General Description

The purpose of the Cuban Refugee Program is to provide, within the limitation of available federal funds, benefits to Cuban refugees to alleviate their hardships until such time as circumstances permit them to become self-supporting or to return voluntarily to Cuba. The nature and extent of the benefits provided are determined by the Secretary of Health, Education, and Welfare, and conditions under which individ-



uals may participate will vary according to the type of benefit. *No right is created for any individual to obtain a benefit or continue to receive a benefit once given.*

## II. Program Background

In January 1961, President Kennedy empowered the Secretary of the Department of Health, Education, and Welfare, by an executive letter and in February 1961 through a directive, to develop an emergency program to provide assistance to Cubans who were fleeing the regime of Fidel Castro.

This action was taken as the result of an investigation which had been made at the request of the President: Immigration authorities had estimated 66,000 Cubans were already in this country, with at least 32,000 in the Miami area. The personal resources of many of these refugees had been exhausted and those of voluntary and local relief authorities were being overstrained.

In 1962 Congress adopted the Migration and Refugee Assistance Act which gave legal authority to the program of emergency aid contained in the President's edict and instituted procedural policies.<sup>1</sup>

## III. Federal Requirements

The Migration and Refugee Assistance Act relates to any "refugee and migrants" determined by the President to be in need of assistance when such assistance would be in the interest of the United States. Cuban refugees were designated as "... aliens who (A) because of persecution or fear of persecution on account of race, religion or political opinion, fled from a nation or area of the Western Hemisphere; (B) cannot return thereto because of fear of persecution on account of race, religion, or political opinion; and (C) are in urgent need of assistance for the essentials of life; ..." <sup>2</sup>

### A. Organization and Administration

Certain duties were prescribed for the Secretary of State and the Secretary of the Department of Health, Education, and Welfare. Those of the Secretary of State dealt principally with fiscal matters; the Department of Health, Education, and Welfare was to concern itself with the use of allocated appropriations for aid payments, health and educational services, special training for employment and related services, and transportation to the place of resettlement.

The federal statute has remained substantially unchanged since its adoption in 1962. Congress has continued to appropriate funds each year for the operation of this emergency program which, of course, is subject to discontinuance by the President should he find the conditions which led to its establishment no longer existent.

Through federal authorization, policies for the administration of the Cuban Refugee Program have been adopted by the Department of Health, Education and Welfare, under the direction of the Social Rehabilitation Services. The focal point of the Cuban Refugee Program is the Cuban Emergency Center, Miami, Florida. The center determines refugee status, provides identification, and makes referrals to partici-

<sup>1</sup> U. S. Foreign Relations and Intercourse Code-22 USC p. 2601 to 2605.

<sup>2</sup> *Op. cit.* Sec. 2601 (b) (3).



pating voluntary agencies operating under contract with the federal government, and to the Florida State Department of Public Welfare which represents the federal government.

Voluntary agencies under contract are: United States Catholic Conference; Church World Service; United Hebrew Immigrant Aid Society, Inc.; The International Rescue Committee; and the National Committee for Resettlement of Foreign Physicians, Inc.

The Florida State Department of Public Welfare is responsible for assistance, child welfare services, and medical care of Cuban refugees, *i.e.*, assistance and services which do not enter directly into the settlement planning of the voluntary agency.

### **B. Eligibility**

The Department of Health, Education, and Welfare delegates authority to establish assistance eligibility to the agency which administers public aid in the state in which the Cuban refugee has been resettled.

To participate in this assistance program, an individual must first qualify for registration at the Cuban Refugee Center, Miami, Florida. He must:

1. Be a Cuban national or have resided in Cuba for five years prior to departure and be presently living in the State of Florida or in another area of the United States as a result of resettlement under the program;
2. Have left Cuba on or after January 1, 1959;
3. Bear proper identification from the Immigration and Naturalization Service and is:
  - a. A parolee under Title 8, USCA Section 1182 (D)(5) of the Immigration and Nationality Act (Parole of Aliens by the U. S. Attorney General); or
  - b. An alien granted indefinite voluntary departure; or
  - c. An alien who is a permanent resident of the United States.

In cases involving special circumstances, policy interpretations are made by the Department of Health, Education, and Welfare. These include situations of:

- a. Mixed marriages between Cuban refugees and non-refugees. (*E.g.*, a Cuban refugee woman married to a U.S. citizen is not eligible for aid under this program; however, children of a previous marriage of their Cuban refugee mother, if mother and child are registered at the center, would be eligible for aid.)
- b. Cubans entering the United States with affidavits of support. (*E.g.*, the person holding the affidavit of support is *not* eligible for assistance, but an evaluation is made of his ability to support the wife and child being joined.)
- c. Permanent resident status for Cuban refugees. (*E.g.*, Cubans on parole status in the United States for over two years may apply for permanent residence.) (This is one of the significant changes made in the administration of the program as permanent residence can be more easily obtained than when the act went into effect.)

- d. Resettled Cuban refugees visiting Miami. (*E.g.*, assistance is continued only under circumstances of illness of a close relative, family reunion, or similar situations; it is not recommended beyond 60 days.)

Resettled Cubans are discouraged at the time eligibility and resettlement is being determined, from returning to Miami to live; and it is brought to their attention that those who do will endanger their eligibility for financial assistance.

In addition to meeting the criteria for registration at the Miami Cuban Refugee Emergency Center, eligibility requirements include the resettlement of the refugee in a city other than Miami, Florida as well as the need of the individual.

No recognition is given to requirements regarding residence for the purposes of the Cuban Refugee Program. The place where the applicant or recipient is physically present is considered to be his place of residence.

### **C. Benefits**

Benefits provided to the refugee through this federally funded program include:

1. Financial assistance in keeping with the composition of the family. Aid to Dependent Children standards are used for families with children *under* 18 years of age. Aid to the Needy Disabled standards are used for adult cases and children 18 years of age and older.<sup>3</sup> (Net income in cash or in kind and resources actually available to the refugee are considered in determining the refugee's need.)
2. A transition allowance. It has been found that it takes from 45 to 60 days for the refugee to find employment, housing, etc., in the area of resettlement. Accordingly, an allowance of \$100 is provided for a family and \$60 for a single person. When the refugee arrives at his destination of resettlement, the transition allowance is made available.
3. Medical care.
4. Social services, including those related to employment and training. However, a refugee aid applicant or recipient is *not* eligible for participation in the WIN program.
5. Social security benefits. Cuban refugees, 72 years of age or over, may be eligible to receive social security benefits the same as citizens and other residents of this country. (This is considered to be one of the two important changes since adoption of the Migration and Refugee Act.)

## **IV. State Implementation**

### **A. Organization and Administration**

Statutory authority for state cooperation in this program is given to the Department of Social Welfare through Sections 10609 and 10610 of the Welfare and Institutions Code.

<sup>3</sup> See *AFDC* and *ATD*.

The program is administered by county welfare departments in accordance with guidelines developed by the State Department of Social Welfare and issued to counties by memorandum. Standards of aid comparable to other federally funded public assistance programs are provided.

When a Cuban refugee moves to California from another state, the case is reviewed and approved by the Department of Health, Education, and Welfare, and determination of eligibility is sent to the appropriate county welfare department. When the refugee is considering moving to another city within the state, it is advisable that he discuss the proposed move with the resettling voluntary agency and the county welfare department regarding its practicality in terms of employment opportunities, cost of housing, and other factors which might affect the decision. However, the refugee may resettle without consulting these local agencies provided it is clear that the move was made to improve the refugee's situation, *i.e.*, to obtain employment or to be near a relative.

### **B. Eligibility**

Eligibility requirements are established by the federal agency, and it is the responsibility of the county welfare department to insure that only persons who meet the prescribed requirements are allowed to participate in the program.

### **C. Benefits**

The county welfare department, when determining aid payments, uses the State Department of Social Welfare regulations relating to need, income, and aid payments for recipients of Aid to Families with Dependent Children and Aid to the Totally Disabled programs. Family cases involving children under 18 years of age, receive benefits based on the AFDC standard of assistance. Adult cases, including children over 18 years of age, receive benefits based on the ATD standard of assistance. There is an exclusion to these standards, however. *All* property holdings of a refugee applicant or recipient located in Cuba are excluded when determining need and amount of aid payment unless or until such time as the property is, in fact, available for utilization by the refugee.

While local sponsors are not legally required to support refugees, they are considered a valuable resource and contact. Refugees are instructed to look to their local sponsor for help in maintaining themselves on the transition allowance which has been provided them and solving some of the problems attendant to settlement in a new community.

Because of fiscal limitations, the California Medical Assistance Program (Medi-Cal) is *not* available to persons eligible for benefits under the Cuban Refugee Program. Medical care for such persons is purchased and funded through the Cuban Refugee Program subject to the following limitations: (a) The scope of care for refugees who receive a cash grant for their maintenance needs shall be consistent with the scope of care available to public assistance recipients under

Medi-Cal; and (b) Those who would be eligible for a cash grant, except that their income exceeds their maintenance need, shall be consistent with the scope of care available to medically needy persons under Medi-Cal. (For more detailed information refer to chapter on *The California Medical Assistance Program*.)

The full range of social services provided by a county welfare department to public assistance recipients is made available to a Cuban refugee upon request without regard to his eligibility for financial assistance, the exception being participation in the WIN program.

Cuban refugees are considered as eligible or ineligible for the limited social security payments in the same manner as persons receive assistance under one of the categorical aid programs.

## V. Funding

The federal government finances 100 percent of the aid payment costs. None of the state's administrative and caseworker costs are reimbursed, except for 100 percent reimbursement for three specified caseworkers (two in Los Angeles and one in San Francisco).

## VI. Statistics

### A. Total Expenditures for Cuban Refugee Program

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	377	443	458	1,203	2,224
2. Total administrative expenditures.....					
3. Total assistance expenditures.....	377	443	458	1,203	2,224
Subsistence/allowance.....	377	443	458	1,203	2,224
Medical care/services.....					

### B. Sources of Funds for Cuban Refugee Program

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures, federal.....	377	443	458	1,203	2,224
2. Assistance expenditures, federal.....	377	443	458	1,203	2,224

### C. Recipient Count for Cuban Refugee Program

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Caseload—end of fiscal year.....	208	231	414	882	1,379



## TEMPORARY ASSISTANCE FOR REPATRIATED AMERICANS

### I. General Description

The prime purpose of this federally financed, emergency program is to provide:

“ . . . money payments and medical assistance for United States citizens returned from foreign countries by the United States Department of State because of mental illness, financial destitution, or other severe personal problems . . . ”<sup>1</sup>

### II. Program Background

In California the program is known as “Temporary Assistance for Repatriates.” However, it has been referred to as “The Assistance for United States Citizens Returned from Foreign Countries,” “Repatriated American Citizens,” and “Assistance to Repatriated U. S. Nationals.”

Federal assistance to destitute and ill citizens returned from foreign countries was authorized by the Social Security Act, as amended June 1961. No substantive changes have been made other than updating the expiration date which now stands as June 30, 1969.

Provision for care of mentally ill repatriates, however, is a part of the U. S. Hospitalization of Mentally Ill Nationals Returning from Foreign Countries Act. (Title 24 USC § 312 through 329). The last amendment to this statute was made in 1960 and provided for federal support to repatriates in St. Elizabeth's Federal Mental Hospital in Washington, D. C.

Under the 1961 amendment to the Social Security Act, the Secretary of Health, Education, and Welfare was authorized to pay expenses for living, medical care, transportation and other needs of U. S. citizens returning from foreign countries because they were ill or destitute, or because there was a war or similar crisis in the country from which they returned.

The program was designed partly to help returnees from Cuba, where the Fidel Castro regime had expropriated property of U. S. citizens, and partly to meet continuing needs of returnees from all areas.

Another reason for its creation was that existing state residence requirements, in terms of public income-maintenance programs, made them useless in handling some returnees from abroad.

### III. Federal Requirements

#### A. Organization and Administration

The Secretary of Health, Education, and Welfare is authorized to make plans for carrying out the program of assistance to returning U. S. citizens who are destitute, in need of medical attention, or who are mentally ill. However, the secretary must first consult with the Secretaries of State and Defense and the U. S. Attorney General regarding proposed procedures.

<sup>1</sup> *Sample Program Budgets for the Fiscal Years July 1, 1967 to June 30, 1968.* Submitted by Ronald Reagan, Governor, to the California Legislature 1967 Regular Session.



The U.S. Consular's Office abroad provides the State Department with information on a repatriate being returned because of illness or destitution. It is the State Department which certifies persons who qualify for aid under the program and advises the Assistance Payments Administration of the Department of Health, Education and Welfare, which in turn, advises the public welfare agency in the state to which the repatriate is returning, of his impending arrival.

First consideration of the federal government is the return of a repatriate to the state in which he has had residence. Transportation is furnished to his destination. If no relatives or friends are able to assist him in getting re-established, aid is then furnished by the county under this federally financed program.

In many ways, assistance for repatriates is like a loan from the federal government—it is temporary. It is an expedient designed to aid a repatriate to become self-supporting. When this status is achieved the recipient is expected to repay the "loan" as soon as possible. However, money that is needed for self-support or support of dependents is not considered as an available resource for repayment purposes.

Unlike other assistance programs, *aid terminates* 13 months after arrival of the recipient in the United States (or earlier if he becomes self-supporting), or in 19 months if he is severely handicapped. The repatriate might, of course, prior to the expiration of aid under this program, become eligible under a state or county public assistance program that would cover his needs.

### **B. Eligibility**

U.S. citizens and their dependents are eligible for this program if they:

1. Have been identified by the Department of State and have returned, or been brought, from a foreign country to the United States; and the cause of such return is any of the following:
  - a. Destitution;
  - b. Illness;
  - c. Illness of any dependent; or
  - d. War, threat of war, invasion, or similar crisis;
2. Are without available resources.

Dependents of those who qualify for assistance include spouse, parents, unmarried children, including adopted children and stepchildren, and unmarried adult children who are handicapped.

### **C. Benefits**

All assistance must be rendered within the United States, and must be furnished to individuals after their return from a foreign country. The Secretary of Health, Education, and Welfare is authorized to provide and designate the amount of assistance either directly or through public or private agencies according to agreements entered into by the secretary and the involved agency.

Assistance can be money payments, services, or both, and covers such needs as food, shelter, clothing, other goods, transportation, medical care and services, *e.g.*, guidance, counseling, vocational rehabilitation (if necessary), and special services such as foster home care.

#### IV. State Implementation

The State Department of Social Welfare operates the program on behalf of the federal government in accordance with an agreement entered into with the Department of Health, Education and Welfare.

The state department is notified by the Department of Health, Education and Welfare of the expected arrival of persons being returned. It then makes the necessary arrangements with the appropriate county welfare department to render the necessary assistance and services which will help these repatriated citizens to get re-established.

Persons receiving aid, or those acting on their behalf, have the responsibility of reporting promptly to the local welfare agency of any circumstance that would cause the assistance to be changed or terminated. The local welfare agency in the area where the repatriate is residing determines his ability to make repayment of any aid which has been extended to him.

#### V. Funding

The benefits for repatriates in need of assistance are paid entirely by the federal government. Administrative expenses incurred at the state and county levels for this program are not reimbursed by the federal government.

#### VI. Statistics

##### A. Total Expenditures for Repatriated U.S. Citizens Program

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	6	5	12	20	27
2. Total administrative expenditures.....					
3. Total assistance expenditures.....	6	5	12	20	27
Subsistence/allowances.....	6	5	12	20	27
Medical care/services.....					

##### B. Sources of Funds for Repatriated U.S. Citizens Program

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures, federal.....	6	5	12	20	27
2. Assistance expenditures, federal.....	6	5	12	20	27

**C. Recipient Count for Repatriated U.S. Citizens Program**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Recipients served during fiscal year.....	n.a.	n.a.	n.a.	n.a.	27
2. End of fiscal year recipient count.....	n.a.	n.a.	n.a.	n.a.	8

n.a. Not available.

**THE FOOD STAMP PROGRAM****I. General Description**

The Federal Food Stamp Act of 1964 describes the purpose of the program as follows:

"... to promote the general welfare that the nation's abundance of food should be utilized cooperatively by the state, the federal government, and local governmental units to the maximum extent practicable to safeguard the health and well-being of the nation's population and raise levels of nutrition among low income households . . ."<sup>1</sup>

**II. Program Background**

In 1961, President John F. Kennedy announced he had directed the Secretary of Agriculture to initiate a pilot Food Stamp Program. The Department of Agriculture subsequently selected eight areas for pilot programs. In 1963 additional areas were authorized. Humboldt County, California, was among those designated.

In the fall of 1964, Congress passed Public Law 88-525, known as the "Food Stamp Act of 1964." This established food stamps as a continuing program, scheduled for expansion each fiscal year. Technically, it is regarded as an agriculture measure since, in common with many of the food donation programs enacted over the past 31 years, it expresses as one of its purposes the expansion of agricultural markets.

As stated previously, California's interest in the program was manifested in 1963 when Humboldt County was assigned by the U.S. Department of Agriculture as a pilot study area. By 1964, Contra Costa and Los Angeles counties were also being tentatively considered for participation in a program to begin in January or February 1965. However, because the State Department of Social Welfare was unable to secure budgetary authorization for positions considered necessary to plan, develop, and supervise such a new program, program procedures of these counties were not submitted to the federal agency.

Anticipating legislative approval of funds in 1965 for state supervision of the program, a revised "plan of operation" was developed correcting some of the problems which had been evident. At its regular session that year, the California Legislature passed AB 739 (Chapter 1311) which established a legal base for the Food Stamp Program to be supervised by the State Department of Social Welfare.

<sup>1</sup> Public Law 88-525, Sec. 2. (U.S. Social Security Act).

To date, 17 counties have been approved by the U.S. Department of Agriculture for participation in the Federal Food Stamp Program:

<i>County</i>	<i>Date of Operation</i>
Humboldt	June 1965
Los Angeles	December 1965
Contra Costa	December 1965
San Francisco	September 1966
Santa Clara	March 1967
San Mateo	April 1967
Modoc	April 1967
Shasta	April 1968
Lassen	April 1968
Sonoma	June 1968
Alameda	August 1968
Monterey	February 1969
Del Norte	March 1969
Sacramento	March 1969
Stanislaus	April 1969
Marin	April 1969
Tehama	July 1969

Ten additional counties have requested programs but they have not yet been approved by the U.S. Department of Agriculture.

### III. Federal Requirements

The Food Stamp Act provides authority to the Secretary of the U.S. Department of Agriculture to formulate and administer the Food Stamp Program, including the adoption of regulations relating thereto.

The federal law:

1. Establishes standards for eligible households.
2. Provides, in areas where a Food Stamp Program is in effect, there shall be no distribution of federally owned foods to households under the authority of any other law except during emergency situations caused by a national or other disaster as determined by the secretary.
3. Governs issuance and use of coupons. (Prices at which food may be sold by wholesale or retail food stores *may not* be specified by the secretary).
4. Provides for determination of the value of the coupon allotment and charges to participating households, and for the redemption of coupons.
5. Provides for approval of retail food stores and wholesale food concerns to accept and redeem coupons.
6. Provides for establishment of procedures for disqualification of retail and wholesale food stores involved in the program.
7. Requires that participating states comply with the provisions of the federal act.
8. Guarantees administrative and judicial review of decisions affecting food stores.
9. Authorizes imposition of fines or imprisonment for violation of laws or regulations governing use of coupons.

A proposed state plan of participation in the Food Stamp Program must be approved by the U. S. Secretary of Agriculture. States wishing to participate in the program must conform to detailed requirements for its administration. Eligible households receiving coupons must be



required to use such coupons to purchase food from federally approved retail stores.

Before granting eligibility to a household, the state must:

1. Exempt the allotment from consideration as income or resources for any purpose under any federal or state law including, but not limited to, laws relating to taxation, welfare, and public assistance programs.
2. Keep records of the program.
3. Refrain from discriminating because of race, religious creed, national origin, or political beliefs.
4. Refrain from decreasing welfare grants or similar federally matched grants as a consequence of a person's or persons' participation in the program.

The state is given authority to place a limitation on the resources to be allowed eligible households. However, standards of eligibility used by the state for the program are subject to approval of the Secretary of Agriculture, and this has rendered practically meaningless any supposed state authority in areas of determination of eligibility, establishment of the amount of stamps which a household may receive, and determination of the portion of the face value of coupons that a household must pay. The USDA has established a nationwide table indicating the allotment to be given and the charge to be made for the allotment to a particular household. Officials of the USDA determine the income and resource standards which will be used in California to establish eligibility for participation in the program.

The state may delegate responsibility for issuance of coupons to another agency of the state government.

#### **IV. State Implementation**

##### **A. Organization and Administration**

In addition to complying with the federal requirements for participation in the Food Stamp Program, certain state guidelines must be adhered to.

Prior to requesting approval of the U.S. Department of Agriculture by the State Department of Social Welfare, according to Sec. 18902 of the Welfare and Institutions Code, the county board of supervisors must pass a resolution approving a Food Stamp Program for the county. The board is permitted to withdraw from the program, providing 60-days' notice is given to the State Department of Social Welfare of its intention to rescind the original resolution.

The state delegates administrative operations to the county welfare departments, but retains program, supervisory, and consultative responsibility. The county welfare department must execute an agreement with the State Department of Social Welfare to administer the program according to the federal-state plan. The county department can delegate the receipt and issuance of stamps and preparation of inventory reports to banks or other agencies if a satisfactory contract or agreement exists and which has received prior approval of the state and federal agencies. (The majority of participating counties in California use banks to serve as issuing offices. Humboldt, Modoc, Shasta, and Lassen counties, however, issue stamps directly through the county welfare department.)



### B. Eligibility

Participation in the program is voluntary. To be eligible a person or persons must:

1. Reside in a county which has an approved Food Stamp Program.
2. Live as one economic unit and share in food purchase, preparation, and generally eat at a common table, *i.e.*, a single person or group of related or nonrelated individuals.
3. Be classified by the county welfare department as either an "assistance household" or a "nonassistance household."

An "assistance household" is one whose members' needs are included in the family budget unit for AFDC, AB, OAS, ATD, or General Relief or whose members are financially dependent upon, or essential for the welfare of the recipient. Such households are automatically considered eligible for the Food Stamp Program if the members reside in a county having the program and are purchasing and preparing their food in common. No food stamp application is required for assistance households, only certification that the household is an assistance household and therefore automatically eligible. The purchase requirement and bonus amount are selected from the USDA table of coupon issuance and are based on adjusted net income and size of the household.

A "nonassistance household" is either a "mixed nonassistance household" (*i.e.*, one with at least one public assistance recipient, but which does not fall within the definition of an assistance household) or a "pure nonassistance household" (*i.e.*, one with no public assistance recipients which meets all of the requirements, including residence and food preparation). All nonassistance households must meet eligibility requirements set by the USDA. That is, total assets and adjusted net income must be within the allowable limits. A nonassistance household is permitted total resources in the amount of \$1,000 if single and \$1,500 if the household consists of two or more members. The adjusted net income limits for nonassistance households as of March 1, 1969, are shown in the following table:

MAXIMUM ADJUSTED NET INCOME AND LIQUID ASSETS OF  
ALL NONASSISTANCE HOUSEHOLD MEMBERS \*

Number in household	Maximum allowable monthly adjusted net income	Allowable liquid assets
1-----	\$165	\$1,000
2-----	200	1,500 for two or more persons
3-----	225	
4-----	255	
5-----	340	
6-----	395	
7-----	440	
8-----	485	
9-----	525	
10-----	565	
Add \$40 for each person in excess of 10.		

\* Effective September 1, 1968.

Persons eating most of their meals in restaurants are not eligible for participation in the program, neither are persons living in boarding homes, nursing homes, hospitals, fraternities, sororities, and dormitories where food is prepared for them and the cost included in their total payment. There are, of course, certain specified exemptions to these exclusions.

An identification card is issued to an eligible household for the purchase of coupons, and the use of food stamps in grocery stores.

Assistance households are recertified for participation in the program at the time of public assistance reaffirmation. Nonassistance households are usually recertified every three months except when designated as a "stable" household, then recertification can be extended to six months.

### C. Benefits

Eligible low-income households pay a set amount for food stamps at set intervals, monthly, weekly, equal semi-monthly or unequal semi-monthly bases. Weekly issuances are seldom used due to the cost of each issuance transaction (53¢-93¢) at banks.

The purchase requirement of the participating household and the amount of bonus stamps, *i.e.*, stamps received in excess of the amount of money paid for them, are established by the U.S. Department of Agriculture. There is no deviation from the figures in the tables and a participating household must pay the purchase requirement at the set interval established for it. The tables on *monthly* and *semi-monthly* income, amount of stamps to be purchased and the amount of coupon issuance follow V. Funding.

An exception to the set purchase requirement was made by the federal government, effective September 1, 1967. The change permits *new* participating households to buy coupons for the first month at one-half of the normal fee—but only during the first year of operation in new food stamp counties. Another change was a reduction in the lowest purchasing requirement levels for all food stamp households. Additional changes in the purchase requirement table were made effective February 1, 1969 for those households that have under \$70 adjusted net income.

### V. Funding

The federal government redeems food stamp coupons issued and pays 62½ percent of the costs for certification workers and immediate supervisors in determining eligibility of "pure nonassistance households." Administrative costs for eligibility determination of public assistance recipients is reimbursed 50 percent by the federal government (HEW). There is no federal or state reimbursement to the county for other administrative costs. The principal county cost is for issuance (sale) of stamps. When issuance is delegated to banks or other issuing agents, it costs the county an average of 85¢ per transaction. There are two transactions per month for each AFDC family and one per month in each adult household.

FOOD STAMP PROGRAM  
ADJUSTED NET INCOME BASIS OF COUPON ISSUANCE  
Monthly

NOTE: First Month Purchase Price Shall Be 50% of the Amount Shown For New Participants During the First Year a County Becomes Operational.

Number in household																					
One		Two		Three		Four		Five		Six		Seven		Eight		Nine		Ten*			
Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total		
50¢	\$18	\$1	\$30	\$1.50	\$46	\$2	\$60	\$2.50	\$68	\$3	\$76	\$3	\$84	\$3	\$90	\$3	\$94	\$3	\$98		
	\$4	4	30	4	46	6	60	6	68	6	76	6	84	6	90	6	94	6	98		
	8	8	32	8	48	10	62	10	72	10	80	10	86	10	92	10	96	10	100		
	10	12	34	12	48	14	62	16	72	16	80	16	86	16	92	16	96	16	100		
	12	16	36	18	52	20	64	22	74	22	82	22	88	22	94	22	98	22	102		
	16	20	38	24	54	26	66	28	76	28	84	28	90	28	96	28	100	28	104		
	16	24	40	30	56	32	70	34	80	34	88	34	94	34	100	34	104	34	108		
	18	28	44	34	60	36	72	38	82	40	92	40	98	40	104	40	108	40	112		
	18	28	44	38	62	40	76	42	86	44	96	44	102	44	108	44	112	44	116		
	20	32	48	44	68	44	78	46	88	48	98	50	106	50	112	50	116	50	120		
	No change in amounts for income in excess of \$100		32	48	44	68	48	82	50	92	52	100	54	108	54	114	54	118	54	122	
			36	50	50	72	52	84	54	94	56	102	58	110	58	116	58	120	58	124	
			36	50	50	72	52	84	56	94	60	104	62	112	62	118	62	122	62	126	
													66	114	66	120	66	124	66	128	
			140	152	54	74	56	86	60	96	64	106									
													68	114	70	124	70	128	70	132	

FOOD STAMP PROGRAM  
ADJUSTED NET INCOME BASIS OF COUPON ISSUANCE—Continued

NOTE: First Month Purchase Price Shall Be 50% of the Amount For New Participants During the First Year a County Becomes Operational.

Adjusted monthly net income	Number in household																			
	One		Two		Three		Four		Five		Six		Seven		Eight		Nine		Ten	
	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total
160-179.99					58	76	60	88	64	98	68	108	72	118	74	126	74	130	74	134
180-199.99					62	80	64	90	68	100	72	110	76	120	78	128	78	132	78	136
200-219.99					66	84	68	92	72	102	76	112	80	122	82	130	82	134	82	138
220-239.99				No change in amounts for income in excess of \$140	70	88	72	96	76	104	80	114	84	124	86	132	86	136	86	140
240-259.99					74	92	76	100	80	108	84	116	88	126	90	134	90	138	90	142
260-269.99					74	92	76	100	84	112	88	120	--	--	--	--	--	--	--	--
260-279.99					--	--	--	--	--	--	--	--	92	128	94	136	94	140	94	144
270-279.99					78	96	80	104	84	112	88	120	--	--	--	--	--	--	--	--
280-299.99					78	96	80	104	88	116	92	124	96	132	98	138	98	142	98	146
300-319.99					--	--	--	--	--	--	--	--	100	136	102	142	102	146	102	150
300-329.99					82	100	84	108	92	120	96	128	--	--	--	--	--	--	--	--
320-339.99					--	--	--	--	--	--	--	--	104	140	106	146	106	150	106	154
330-359.99					86	104	88	112	96	124	100	132	--	--	--	--	--	--	--	--
340-359.99					--	--	--	--	--	--	--	--	108	144	110	150	110	154	110	158
360-389.99					90	108	92	116	100	128	104	136	112	148	114	154	114	158	114	162
390-419.99					94	112	96	120	104	132	108	140	116	152	118	158	118	162	118	166
420-449.99					98	116	100	124	108	136	112	144	120	156	122	162	122	166	122	170

Use these figures for all adult categories (fixed basis of coupon issuance).

\* For each \$30 additional income or portion thereof, add \$4 to purchase requirement, and \$4 to the total. For more than 10 persons, add \$4 to the total for each additional person.

For more than 10 persons, add \$4 to the total amount for each person.

SOURCE: California-SDSW-Manual-SS, February 1, 1969, Exhibit I.

FOOD STAMP PROGRAM  
ADJUSTED NET INCOME BASIS OF COUPON ISSUANCE  
Semimonthly

NOTE: First Month Purchase Price Shall Be 50% of the Amount Shown For New Participants For the First Year a County Becomes Operational.

Number in household																						
One		Two		Three		Four		Five		Six		Seven		Eight		Nine		Ten¹				
Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	Pur- chase	Total	
25¢	\$9	50¢	\$15	75¢	\$23	\$1	\$30	\$1.25	\$34	\$1.50	\$38	\$1.50	\$42	\$1.50	\$45	\$1.50	\$47	\$1.50	\$49	\$1.50	\$49	
		\$2	9	\$2	23	3	30	3	34	3	38	3	42	3	45	3	47	3	49	3	49	
		4	9	4	24	5	31	5	36	5	40	5	43	5	46	5	48	5	50	5	50	
		5	10	6	24	7	31	8	36	8	40	8	43	8	46	8	48	8	50	8	50	
		6	11	8	26	10	32	11	37	11	41	11	44	11	47	11	49	11	51	11	51	
		8	11	10	27	13	33	14	38	14	42	14	45	14	48	14	50	14	52	14	52	
		8	11	12	28	15	35	17	40	17	44	17	47	17	50	17	52	17	54	17	54	
		9	12	14	30	17	36	19	41	20	46	20	49	20	52	20	54	20	56	20	56	
		9	12	14	31	19	38	21	43	22	48	22	51	22	54	22	56	22	58	22	58	
		210	213	16	24	22	39	23	41	24	49	25	53	25	56	25	58	25	60	25	60	
				16	24	22	34	24	41	25	46	26	50	27	54	27	59	27	61	27	61	
				18	25	25	36	26	42	27	47	28	51	29	55	29	60	29	62	29	62	
				18	25	25	36	26	42	28	47	30	52	31	56	31	61	31	63	31	63	
				--	--	--	--	--	--	--	--	--	--	33	57	33	60	33	62	33	64	
				20	26	27	37	28	43	30	48	32	53	--	--	--	--	--	--	--	--	
						--	--	--	--	--	--	--	--	34	57	35	62	35	64	35	66	

No change in  
amounts  
for income  
in excess of  
\$100





The state has funding responsibility for only the 21 consultant and supervisory positions in the Food Stamp Bureau of the State Department of Social Welfare and for the development of program forms, manuals of policy and procedure, printed information, and related activities.

## VI. Statistics

### A. Total Expenditures for Food Stamp Program

(in thousands of dollars)

	Fiscal Years		
	1965-66	1966-67	1967-68
1. Total expenditures*	1,957	6,124	11,756
2. Total administrative expenditures†	n.a.	n.a.	500
3. Total assistance expenditures	1,957	6,124	11,256

n.a. Not available

### B. Sources of Funds for Food Stamp Program

(in thousands of dollars)

	Fiscal Years		
	1965-66	1966-67	1967-68
1. Total expenditures			
Federal	1,957	6,124	11,484
State	n.a.	n.a.	272
2. Administrative expenditures			
Federal	n.a.	n.a.	228
State	n.a.	n.a.	272
3. Assistance expenditures, federal	1,957	6,124	11,256

n.a. Not available

### C. Recipient Count for Food Stamp Program

	Fiscal Years		
	1965-66	1966-67	1967-68
1. Average number of monthly recipients			
Total cases	9,530	29,453	48,102
Total persons	33,784	100,561	162,349
Public assistance cases	8,229	25,580	42,319
Public assistance persons	27,270	82,580	134,003
2. Total fiscal year, number of recipients			
Total cases	114,359	353,433	577,227
Total persons	405,409	1,206,735	1,948,186
Public assistance cases	98,751	306,955	507,831
Public assistance persons	327,245	990,965	1,608,040
3. Average monthly value of federal bonus stamps	\$163,120	\$510,356	\$938,166

\* Equals value of Federal Bonus Stamps above cash paid for coupons.

† Includes case service costs.

n.a. Not available.

## FAMILY AND CHILDREN SERVICES AND ADOPTIONS

### I. General Description

Child Welfare Services (CWS), now included in Family and Children Services, are defined as:

"... public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing, remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children; (2) protecting and promoting the welfare of children of working mothers; and (3) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities."<sup>1</sup>

### II. Program Background

Title V of the original federal Social Security Act of 1935 provided for:

1. Maternal and Child Health
2. Crippled Children Services
3. Child Welfare Services (CWS)

The latter program provided some federal financing for such programs as foster care, juvenile courts, youth workers, anti-delinquency projects and guidance centers to those states which qualified and chose to participate. No matching funds were required of the states, but the funds were limited to paying part of the cost of social services, according to a formula based on expenditures made by the state for child welfare services.

The California Child Welfare Services plan, approved in June 1936, began on a very modest scale under the general supervision of the State Department of Social Welfare. Participating counties generally administered the services, but the state department provided some services within certain counties which found it unfeasible to operate a program. Child Welfare Services were nonexistent in those counties choosing not to share the cost of such programs.

Originally, the annual federal appropriations for child welfare services were small (*e.g.*, from \$625,000 in fiscal 1936 to \$1,510,000 in fiscal 1946) and the services were limited to rural areas or areas of special need. The 1958 social security amendments removed the restriction of services to rural areas and specifically required each state to provide one-third to two-thirds of the program costs—depending on the state's per capita income.

The 1962 amendments required participating states to extend Child Welfare Services to all areas of the state by July 1, 1975, and increased the annual authorization to \$25,000,000. In addition to regular authorizations, Congress began in 1960 to authorize grants by the Secretary of Health, Education and Welfare for research and demonstration projects.

<sup>1</sup> *Federal Social Security Act*, Title IV, Part B, Section 425.

### III. Federal Requirements

The federal Social Security Act requires that each state have an acceptable plan for use of funds to be expended on "family and children services." The state plan must provide:

1. Supervision and administration of the plan by the same state and/or local agencies that administer aid and services to AFDC recipients.
2. Coordination between the services provided under the plan and other services to dependent (AFDC) children.
3. For the establishment at the state and local levels of a family and children's advisory committee with representation from other state agencies, recipient groups, professional, civic or other public or private organizations and private citizens.
4. For meeting specific requirements in the provision of day care services.
5. Services offered under the plan to all children in need of them in all political subdivisions within the state by July 1, 1975.
6. For the delivery of services by trained personnel.
7. Effective July 1, 1969, for the training and use of paid full-time and part-time subprofessional staff and non-paid or partially paid volunteers. Hiring practices for obtaining subprofessional staff must emphasize recruitment of persons with low incomes.

Traditionally, "child welfare services" have been available mainly for children out of their own homes (*i.e.*, foster care, adoption, and institutional care); except from January 1964 through June 1968 fixed amounts of CWS funds were required to be used for day care. However, protective and homemaker services, where efforts are made to keep the home intact, were encouraged, but not required until 1967.

The 1967 amendments to the federal Social Security Act were an effort to provide additional out-of-home services for children as well as to require social work services to families still intact. The 1967 amendments also reinforced the 1962 amendments in encouraging states to provide services to all children regardless of financial need.

Prior to 1968, states submitted separate plans for AFDC and Child Welfare Services. However, the Department of Health, Education and Welfare has requested that the state plan for CWS be submitted with the plan for Aid to Families with Dependent Children (AFDC) and referred to as the plan for Family and Children Services.<sup>2</sup> Although the plan for children's services has become more comprehensive and the name has changed, federal funds continue to be provided for *some* of the persons served through Title IV B, "Child Welfare Services," and are known as CWS funds.

Under the new plan, participating state agencies are required by federal regulation to provide all necessary services for the child and family. Some of the following services, although required to be included in the state plan, may or may not be provided with CWS funds:

<sup>2</sup>For purposes of this report, *Family and Children Services* describe the social services available to AFDC and non-AFDC children. The assistance portion of the plan is described under *Aid to Families with Dependent Children*.



1. Intake, information and referral services;
2. Protective services;
3. Employment and social rehabilitation services;
4. Programs to prevent or reduce the incidence of births out of wedlock and to otherwise strengthen individual and family life;
5. Out-of-home services, including foster and institutional care;
6. Day care services for children;
7. Health care services;
8. Family planning services.

CWS money must be used by the state in accord with a plan approved by the federal government. It cannot be used for services or programs already funded with Title IV A (AFDC) money, or through existing state or local sources.

#### **IV(A) State Implementation—Family and Children Services**

##### **A. Organization and Administration**

The State Department of Social Welfare is responsible for carrying out the state plan for Family and Children Services, which includes disbursing CWS funds to the counties.

With the availability of other federally supported programs, CWS funds are currently used to provide protective services to children not actually or potentially eligible for AFDC (non-aided, non-linked children).

Participating counties establish and maintain specialized services to non-aided, non-linked children subject to state and federal matching funds only where state approval has been given in advance through the submission of a county plan. To meet the needs of children in some counties otherwise unable to provide these services, the department has entered into an agreement to provide the services. Under this agreement, the department has "outstationed" six state staff members who perform some services and organize community agencies to perform others.

Insofar as possible, professionally trained social workers are employed to provide these specialized services. It is assumed that by providing trained child welfare workers and special monies to carry out these special programs, more families will be helped to prevent and/or resolve the problems of dependency, neglect and abandonment.

In 1968, legislation was enacted which designated specific uses for CWS funds. AB 74 (Chapter 69) requires the establishment of a public system of statewide protective services for children in need of such services regardless of family income. Under this legislation, federal funds allocated to the state for child welfare services are to be used to finance child protective services for children not qualifying under AFDC. The use of CWS funds for this program is subject to the following limitations:

1. If there is no increase in the funds, the allocation for protective services may be limited to the same proportion of the federal grant as obtained in fiscal year 1967-68;



2. If there is an increase in the funds, all of the increase shall be allocated to provide protective services to non-aided, non-linked children, except as may be required for the state to remain eligible to receive such funds;
3. Other priorities for the use of the funds may be set in the Budget Act.

### **B. Eligibility**

Traditionally, eligibility for Family and Children Services was based on AFDC eligibility. Exceptions were made when services given outside of the home were beyond the parents' ability to pay. In these cases the services were the product of a juvenile court order or upon professional recommendation that they were necessary for the treatment of the child. The parent was required to pay whatever he could for the service, from total to partial expenses.

Protective services for the prevention of dependency, neglect and abandonment have been extended to children who are not actual, former or potential AFDC recipients only in counties which have chosen to do so. In these counties protective services must be extended without regard to family income to children in need of protection because they:

1. Are being neglected, exploited, or abused, either physically or emotionally, or
2. Are being damaged by the conduct of parents, guardians, or custodians, whether wilfully or otherwise, or
3. Are without parents, proper guardianship, or custody.

Protective services are available to AFDC recipients in all counties. These services must be available to former and potential AFDC recipients by no later than July 1, 1970, and to all children in need of such services regardless of family income by no later than July 1, 1975.

The services offered to families under this program are voluntary.

### **C. Benefits**

(Day care services provided with CWS funds are described in another section of this report entitled, *Day Care Services under Federal Social Security Act, Title IV*).

Protective services include all services necessary to protect a child and correct or improve the situation which led to his neglect, abuse, exploitation or delinquency. These services include, but are not limited to:

1. Social services to children, parent(s) or guardian(s);
2. Care of the child outside of the home (if required) in emergency shelter care, day care, foster care or institutional care;
3. Referral to a law enforcement agency for investigation.

Emergency response is available to requests for protective services made after office hours and during weekends and holidays. However, the full range of protective services must be available 24 hours a day, seven days a week by July 1, 1971.

#### IV(B) State Implementation—Adoptions

An adoption:

“is a way to serve children who need and can benefit by permanent placement with couples seeking to complete their families. Any child can be considered adoptable who needs a home, who is legally free for adoption, who can develop in a family setting, and for whom a suitable family can be found which will accept him as he is. It includes legal and social processes, transplanting a child into a new family with whom his relationship is the same as if he were that family's natural child.”<sup>3</sup>

The State Department of Social Welfare licenses county welfare departments and private agencies to provide adoption services. These agencies must meet regulations established by the SDSW and operate under a plan approved by the department. Currently 25 county welfare departments are licensed to provide adoption services to residents of their respective counties. Three additional counties may be licensed in 1969–70 fiscal year. Of the nine private adoption agencies, only one, the Children's Home Society, provides services on a statewide basis. As a result of legislation passed during the 1968 general session, (SB 409, Chapter 879) the State Department of Social Welfare is permitted to provide relinquishment adoption services in any county which does not have a county adoption agency. The first of these units, located in Sonoma County, will open April 1969.

In 1968 the Legislature enacted SB 128 (Chapter 1322), the Aid for Adoption of Children pilot program, which began January 1969 and will terminate in 1971 unless extended by the Legislature. This law requires the State Department of Social Welfare to establish the program to be carried out by any licensed county adoption agency. The program is to determine: (a) the extent to which a public information campaign on adoptions would tend to increase the number of persons seeking to adopt “hard-to-place” children; (b) the extent to which financial assistance can increase the number of adoptions, especially among lower-income families; and (c) the extent of financial assistance, if any, which is needed.

Agencies charge fees for services to persons applying to adopt a child. The maximum fee charged by private agencies must be approved by the State Department of Social Welfare. The maximum fee (\$500) for public agencies is established by law. The fee may be waived or reduced if it might cause the family economic hardship detrimental to the welfare of the child. According to law, fees are not charged in independent adoptions.

The State of California offers the following adoption programs which are governed by state law:

1. An “agency adoption” is the placement of a child by a licensed adoption agency which has taken a relinquishment from the parent or parents. The agency has legal possession of the child and places the

<sup>3</sup> California Department of Social Welfare, *Adoptions in California*, Sacramento: California Office of State Printing, January 1966, p. 2.

child with a family formerly studied and approved. Adoption agencies (a) assist natural parents in considering whether a child should be relinquished for adoption or in making alternate plans for him, (b) may make maternity care funds available to a mother in need or refer her for help from Medi-Cal if she is eligible, (c) study children to determine whether adoption is the best plan, (d) accept children for adoptive placement including taking relinquishments or other actions to make the child legally free, (e) study homes of applicants in terms of suitability for placement of a child, and (f) place children in approved adoptive homes and provide postplacement services until legal completion of adoption. If a relinquished child is not adopted, the agency is responsible for his care, health, welfare, education and support while he is a minor. In these instances, the child is placed in a foster home or institution.

2. The "independent adoption" is the placement of a child by the natural parents directly with the adopting couple. The State Department of Social Welfare or a county agency delegated responsibility for independent adoptions is required by state law to study the home and the child after the child is placed and the adoption petition filed. This type of adoption allows the natural parent to change his or her mind anytime until a court grants the adoption. The adoptive parents may change their plans and return the child at any time before the court makes the adoption order. The study agency reports and recommends to the court on the suitability of the home for the child, whether the child is a proper subject for adoption and whether the adoption is best for him.

3. A stepparent adoption occurs when a stepparent petitions the court for the adoption of a child and the spouse, who is a natural or adoptive parent retains custody of the child. Both the parent retaining custody and the parent relinquishing custody of the child must consent to the adoption. This type of adoption by law must be studied by the county probation department and reported to the court.

4. Inter-country adoptions are covered by California and federal immigration law. The State Department of Social Welfare cooperates with international social agencies and the Immigration and Naturalization Service in the adoption.

Special provision is made for the legitimation and adoption of an illegitimate child by the father when he complies with all the provisions of Section 230 of the Civil Code. In such cases other provisions of the adoption law do not apply. An adult may adopt another adult younger than himself by an agreement of adoption in the superior court of the county in which either resides.

## **V. Funding**

### **A. Family and Children Services**

Family and Children Services, including protective services provided to AFDC children and former and potential recipients of AFDC, are financed under the AFDC program. (Day care services are described in another section of this report.)

The disbursement of federal child welfare funds among the states is made in accordance with a formula which gives a greater proportion of the funds to states which have a larger population under 21 and a low level of per capita income. Beginning in fiscal year 1959-60, the federal share of the total cost of specified Child Welfare Services was to range from 33 $\frac{1}{3}$  to 66 $\frac{2}{3}$  percent, according to the state's per capita income.

Since only a limited amount of federal funds is appropriated by Congress for Child Welfare Services, California divides its share of the funds among counties which have submitted approved plans for use of CWS funds. Prior to October 1, 1968, only the salaries and personal benefits of caseworkers providing protective services were reimbursed with CWS funds. Costs of clerical support and operating costs were met by the county. Since October 1, 1968, expenditures for administration and services incurred under the approved county plan for protective services for non-aided, non-linked children have been reimbursed 85 percent by CWS funds. The remaining share of costs is a county responsibility.

### B. Adoptions

The federal government views adoption services as one of the child welfare services which, under their formula, has earned CWS funds. However, California cannot use CWS funds for its adoption program since it is permanently funded by the state and counties.

The State Department of Social Welfare subvents 100 percent of the funds expended by public adoption agencies (county welfare departments) for providing adoption services. Private adoption agencies receive no state or federal funds for their services. These agencies are supported by adoption fees and funds contributed from private sources.

Cost of care of relinquished, unadopted children in foster homes or institutions is provided under the AFDC Boarding Home and Institution (BHI) program (usually state and county funds). Services to this group of children may be subvented by public funds or under certain circumstances from private adoption agencies using private funds.

## VI. Statistics

### A. Total Program Expenditures for Family and Children Services and Adoptions

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	15,446	16,986	18,563	21,134	19,659
2. Total administrative expenditures.....	9,751	10,889	11,431	11,784	12,799
State.....	2,995	3,429	2,643	1,740	2,571
County.....	6,756	7,460	8,788	10,044	10,228
3. Total direct program costs.....	5,695	6,097	7,132	9,350	6,860
Case services.....	5,695	6,097	7,132	9,350	6,860



## B. Sources of Funds for Family and Children Services and Adoptions

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	1,843	1,590	1,691	1,048	695
State.....	12,132	13,973	14,971	17,979	18,657
County.....	1,471	1,423	1,901	2,107	307
2. Administrative expenditures					
Federal.....	688	868	795	1,048	695
State.....	7,592	8,598	8,735	8,629	11,797
County.....	1,471	1,423	1,901	2,107	307
3. Direct program costs					
Federal.....	1,155	722	806	-----	-----
State.....	4,540	5,375	6,236	9,350	6,860

## C. Count of Children Receiving Services

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Children receiving child welfare services					
Total children.....	-----	-----	-----	-----	28,559
Terminated during year.....	-----	-----	-----	-----	18,203
2. Children placed for adoption.....	-----	-----	-----	7,610	8,392

## DAY CARE SERVICES

(Federal Social Security Act, TITLE IV)

### I. General Description

Day care services have been defined as:

“ . . . comprehensive and coordinated sets of activities providing direct care and protection of infants, preschool, and school age children outside their own homes for a portion of the day.”<sup>1</sup>

Title IV B of the federal Social Security Act has in the past provided funds to support programs of day care for children of working parents from low income families. Day care is only one of several child welfare services for which such federal support is provided under the act. These services, including day care, are intended to:

“ . . . supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children . . . ”<sup>2</sup>

<sup>1</sup> California, *Manual of Policies and Procedures: Public Social Service*. Sacramento: The Department of Social Welfare, Section 30-353.

<sup>2</sup> *Federal Social Security Act*, Title IV B, Section 425, 1967.



## II. Program Background

Title V of the original federal Social Security Act of 1935 provided for:

1. Maternal and Child Health
2. Crippled Children Services
3. Child Welfare Services (CWS)

The latter program provided some federal participation for such programs as foster care, juvenile courts, youth workers, anti-delinquency projects, guidance centers, etc., to those states which qualified and chose to participate; however, the services were limited to rural areas or areas of special need.

Although some of these funds could have been used to provide day care services, California funded its day care program from other sources. California spent none of its CWS funds for day care prior to fiscal 1963-64. In 1958 the restriction of child welfare services to rural areas was removed.

The first provision of federal funds specifically for Day Care Services was the Lanham Act of 1941. Implemented in California in January 1943, the act was designed to release mothers for work to meet critical labor shortages during World War II. With the conclusion of the war, the federal government discontinued support of the program in 1946. Since that time it has become known as the Children's Center program, has developed a strong instructional component, and is mainly funded by state funds and parents' fees.<sup>3</sup>

The second instance of federal earmarking of funds for day care services came with the 1962 amendments to the federal Social Security Act. Under Title V of the act, \$25 million was appropriated for Child Welfare Services during fiscal 1963-64, and \$5 million was earmarked for day care services to AFDC and other children from low income families. No state or local matching was required for these funds.

Under Title IV, increased emphasis was placed on provision of social services, including day care, to recipients of Aid to Families with Dependent Children, and 75 percent federal reimbursement was provided for states and counties which participated. Provisions for increased services were also included in public assistance programs other than AFDC.

## III. Federal Requirements

The federal Social Security Act requires that each state have an acceptable plan which includes provisions for the use of funds to be expended on 1) Child Welfare Services in general and 2) Day Care Services in particular. The state plan must provide:

1. Supervision and administration of the plan by the same state and/or local agencies that administer aid and services to AFDC recipients;
2. Coordination between the plan's services and other services to dependent (AFDC) children;
3. Provision by July 1, 1975, of all services offered under the plan to all children in need of them in all political subdivisions within the state;

<sup>3</sup> See *Children's Centers*.

4. Effective July 1, 1969, for training and use of paid subprofessional staff with emphasis on the recruitment of persons with low incomes.

With regard to Day Care Services particularly, the state plan must provide for:

1. Cooperation with state health and education agencies in provision of necessary health and education services to children receiving day care;
2. Establishment of an advisory committee;
3. Adoption of safeguards to insure that day care is provided only when in the interest of the child and mother and when a need exists;
4. Procedures to insure the payment of reasonable fees by parents who are able to do so;
5. Giving priority in determining who will receive the services to low income and other groups which have the greatest need for day care services;
6. Using only facilities licensed by the state or which meet licensing requirements;
7. Development and implementation of effective arrangements for involvement of parents.

The 1967 amendments to the federal Social Security Act required the Secretary of Health, Education and Welfare and the Director of the Office of Economic Opportunity to adopt common standards and regulations. Pursuant to this requirement a federal interagency group, the Federal Panel on Early Childhood Education, was established in early 1968. The panel initiated the Community Coordinated Child Care ("4 C's") Program. Part of this program for central planning of federal efforts in the child care field was the adoption of interagency day care requirements *which apply to all day care programs receiving federal funds*.

The requirements are effective as of July 1, 1968, but one year will be allowed, with some exceptions, before states must comply with them. They require that:

1. The size of groups and the ratio of children to adults be acceptable (*e.g.*, a day care center with 3 to 4 year old children must have no more than 15 children in a group, with at least one adult for every five children).
2. Acceptable state standards and/or licensing be required of day care facilities;
3. Priority in provision of services be given to those persons with the greatest need (*e.g.*, persons with low income);
4. Appropriate safety and sanitation requirements be established by appropriate agencies;
5. Each day care facility have appropriate space and equipment for play, rest, privacy, and, in case of illness, isolation suited to the size of the group and the ages and particular needs of the children;
6. Appropriate educational activities supervised by trained and/or experienced staff be provided to children in the facilities;

7. Counselling and guidance services, including assessment of family ability to pay for services and assessment of family needs, be provided by trained and/or experienced staff, including non-professional staff;
8. Evaluation be made of the children's need for dental, medical, and other health services (arrangements must be made for such care or, when authorized by law, the care must be provided);
9. Periodic assessment of the physical and mental health of the staff be made;
10. Adequate and nutritious meals and snacks be provided;
11. Provision be made for orientation, continuous in-service training, and supervision of all staff, with staff members assigned responsibility for organizing and coordinating the training program;
12. Equal opportunity be extended to all persons in recruitment and selection of personnel, with a provision for effective use of nonprofessional staff and recruitment of low income people by July 1, 1969;
13. Opportunities for parent observation and involvement be provided. Agencies providing care for 40 or more children, must have an advisory committee which performs productive functions and has at least 50 percent parent-elected parents;
14. A statement of policies and procedures is published;
15. Coordination be established between administering agencies to promote continuity of service and avoid duplication;
16. Programs and facilities be evaluated periodically;
17. No discrimination on the basis of race, color or national origin be made in the administration and operation of all agencies and facilities involved in such programs.

Other than the strengthening of federal requirements for state participation in federal matching for day care services under CWS (Title IV B), the major changes in the program since fiscal 1963-64 have been: 1) The increase in the amount of federal funds for day care from \$5 million in 1963-64 to \$7 million in fiscal 1965-66; and 2) An end after 1967-68 to the practice of limiting (*i.e.*, "earmarking") a specific amount of the CWS funds for expenditure on day care.

The 1967 Social Security Act amendments (Title IV C), established a Work Incentive Program (WIN) for potentially employable AFDC recipients. Funds for day care services for children of participants in WIN were included. (Since October 1, 1968, state law requires the State Department of Social Welfare to give priority to protective services, not day care, in expenditure of CWS (Title IV B) funds.)

#### **IV. State Implementation**

##### **A. Organization and Administration**

The State Department of Social Welfare establishes program standards for day care programs instituted by counties under Title IV of the federal Social Security Act. The standards issued and effective as of July 1, 1968, vary from federal standards in only a few respects (*e.g.*, 33 $\frac{1}{4}$  percent parent participation on day care advisory committees instead of 50 percent), but those deviations will be eliminated before

July 1, 1969, in order that the state plan will be acceptable to the federal Department of Health, Education and Welfare. When counties participate in any federally funded day care program they agree to comply with the federally approved state plan for social services to children.

Overall supervision of the program within the state and distribution of available federal funds is provided by the State Department of Social Welfare. The department also has provided some day care services for counties which do not have their own programs and licenses proprietary day nurseries.

Under Titles IV B (CWS) and IV C (WIN) each participating county receives an allocation from the Department of Social Welfare out of the federal funds which are provided. With these funds the county welfare department purchases care from licensed private or public agencies or provides care itself for children who are authorized by the county to participate in the program.

Private family care homes (limited to six children) and special day care homes (limited to 10 children) are licensed by the county. In-home day care services are approved by the county as meeting licensing standards. Some CWS day care funds were made available for demonstration or pilot projects in the field, and the development and expansion of programs for neighborhood day care centers and in-home day care are partly a result of these types of projects.

### **B. Eligibility**

Until October 1, 1968, the expenditure of CWS funds was, in practice, limited to children in families which were receiving AFDC; therefore, the eligibility requirements were generally the same as under that program. The funds could have been used to provide day care for children of potential AFDC recipients, recipients of Aid to Needy Disabled, seasonal agricultural families, or other persons judged by the county welfare department to be in need of the service; however, limited funds resulted in few, if any, children other than those of AFDC recipients receiving such services.

Since October 1, 1968, the state has, in accordance with state law, established protective services as a priority item in the expenditure of CWS funds. This has in effect, terminated day care under Title IV B (CWS). If any children do receive day care paid by CWS funds, they will be from low income families who are not recipients or potential recipients of AFDC or other categorical aid programs. Children from families who are recipients or potential recipients will henceforth rely on day care services provided through the Work Incentive Program, the social service programs provided in connection with categorical aid, and, for some families, the Children's Centers program.<sup>4</sup>

### **C. Benefits**

Eligible children receive direct care and supervision outside their own homes for a portion of the day as necessitated by the absence of the parent or parents from the home. Ordinarily these services are provided during the day.

<sup>4</sup> See *Work Incentive Program, Aid to Families with Dependent Children, and Children's Centers Program*.



If the child is of pre-school age, the services will be provided during those hours the parent is participating in a training project or at work. If the child is attending school, care and supervision is provided either before or after school to coincide with the parents' time away from home.

Day care services may be obtained through either of two methods. If an AFDC parent is employed or receiving training outside of the WIN program, an allowance will be provided in the AFDC grant with which to purchase the necessary services or payment may be made by the county to the day care operation. If the parent is participating in the WIN program, necessary day care services must be provided by the county welfare department.

## **V. Funding**

Day care services provided through Title V (now IV B) of the federal Social Security Act were 100 percent federally funded, though the funding was not open-ended. That is, only a certain amount of federal funds was appropriated by Congress for Child Welfare Services. The division of funds among the states was made in accordance with a formula which gave a greater proportion of the funds to states which had a larger population under 21 and low level of per capita income. The state divided its share of the funds among counties which had submitted approved plans for the use of CWS funds.

Some of the CWS funds available for day care during fiscal years 1963-64, 1964-65, and 1965-66 were allocated by the Department of Social Welfare for demonstration or pilot projects. The state participated to varying degrees in the funding of these projects; however, beginning October 1, 1968, no CWS funds have been allocated by the State Department of Social Welfare to counties for provision of day care services.

The costs of day care services to WIN recipients (Title IV C) are shared by the federal government (85 percent), state (10 percent), and county (5 percent). Although the federal funding of WIN is not open-ended, ample funds have been provided to take care of estimated costs for the present fiscal year.

Through June 30, 1969, 85 percent of costs of day care provided to public assistance recipients as part of the social services authorized and encouraged by Title IV A (AFDC) and other titles of the Social Security Act are reimbursed by the federal government. The county pays the remaining 15 percent. Beginning July 1, 1969, the federal share will drop to 75 percent, and the county share will be increased to 25 percent. These funds are open-ended. That is, federal reimbursement will be provided for the cost of services to any federally-eligible recipient.



## VI. Statistics

### A. Program Expenditures for Day Care Services

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....		292	474	308	203
2. Administrative expenditures.....		n.a.	n.a.	n.a.	n.a.
3. Direct program costs.....		292	474	308	203
Case services.....		292	474	308	203

n.a. Not available.

### B. Sources of Funds for Day Care Services

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures, federal.....		292	474	308	203

n.a. Not available.

## PROTECTIVE SERVICES FOR THE MENTALLY HANDICAPPED

### I. General Description

The purpose of the program of protective services for the mentally handicapped is:

"... to prevent unnecessary commitment to mental institutions of mentally handicapped persons. *i.e.*, mentally ill or mentally retarded; to facilitate the return to the community of those already in mental hospitals; to stabilize and support their adjustment to community living and reduce the chances of their needing future mental hospital care.

"This program which is operated by the (Department of Social Welfare) is directed primarily to mentally ill and retarded persons released from mental (state, county, and private) hospitals and secondarily to other mentally handicapped persons for whom community adjustment services provide a practicable alternative to hospitalization. The program also provides general information, educational, consultative and community development social services designed to reduce the incidence and severity of mental disorders in the community and recourse to hospital care as a supplement to local community mental health services."<sup>1</sup>

<sup>1</sup> *State of California Program Support and Local Assistance Budget for the Fiscal Year July 1, 1969 to June 30, 1970*, submitted by Ronald Reagan, Governor, to the California Legislature, 1969 Regular Session, page 568.

## II. Program Background

The first real beginnings of an extramural care program for persons released from state mental institutions occurred in 1939. In that year legislation was enacted (Chapter 804, p. 2019) which permitted the then Department of Institutions to grant a "license" to private homes to care for up to and including six patients "paroled" from state hospitals. This same statute permitted the department to pay a rate not to exceed \$25 per month for the care of patients paroled to the custody of any such home.

By administrative order, a supervisor of extramural care and staff of social workers were assigned to license private homes and supervise the placement of patients released from the state hospitals. The number of mentally ill and mentally retarded patients placed into these "family care homes" increased as did the staff necessary to promote the program. In 1946, the staff assigned to the extramural care program became known as the Bureau of Social Work of the Department of Mental Hygiene.

Also in 1946, by action of the Legislature (First Ex. Session, Chapter 44, p. 67), the rate of payment for care in family care homes was increased to an amount not to exceed \$45 per month. This rate increased again in 1949 to a rate not in excess of \$60 per month.

Again in 1951, the Legislature permitted an increase in the rate of pay to family care homes, but not to exceed \$70 per month (Chapter 1115, p. 2859). This legislation also amended the licensing of homes to "certification" of homes and made them subject to regulation by the department.

The next major change in the program occurred in 1961 when, due to legislation (Chapter 1267, p. 3045), the department was permitted to place patients "on leave of absence" from state hospitals in licensed hospitals or other suitable licensed facilities. The rate of pay for patients placed in family care homes was increased to an amount not to exceed \$130 per month.

## III. Federal Requirements

Protective services for mentally handicapped persons are not specifically authorized under federal legislation; therefore, the program is not subject to direct regulation by the federal government. However, since July 1, 1966, the program has been eligible to receive federal funds under the 1962 service amendments to the Social Security Act.

## IV. State Implementation

### A. Organization and Administration

From its establishment until July 1, 1966, the extramural care program was administered by the Bureau of Social Work in the Department of Mental Hygiene. During this time the primary role of the program was to provide aftercare services to patients on leave from state hospitals who were in their own homes or in out-of-home placements.

In 1966, the Legislature, through the Budget Act, transferred the bureau to the Department of Social Welfare. This transfer, which became effective July 1, 1966, was sanctioned by legislation enacted during the 1967 session (Chapter 360). As a result of additional provisions contained in these two measures, the scope of the program was ex-

panded to include the prevention of unnecessary commitments of persons to state hospitals and facilitate the release of patients for whom hospital care is not the appropriate treatment. In effect, this transfer:

1. Qualified the program for federal subvention by placing it in the single state agency responsible for providing social services.
2. Increased staffing since federal support was dependent upon smaller caseloads and an improved supervisory standard.
3. Utilized funds for nonpsychiatric medical care for former state hospital patients in the community to avoid their return to the hospital.
4. Increased the out-of-home care rate to \$150 per month. (The legislative ceiling is \$160 per month.)

Beginning in April 1967, a differential rate system was used for the placement of mentally retarded leave patients in nursing care facilities under 100 percent state financing. (Formerly a flat rate of \$200 had been used.)

After the transfer of the program to the Department of Social Welfare on July 1, 1966, the administrative offices were first called the Division of Protective Social Services and since October 1968, the Community Services Division. The services of the Community Services Division are provided by over 500 trained psychiatric social workers who operate out of 40 district offices and cover every area of the state.

Services similar to those provided by the Community Services Division are provided by county welfare departments as part of the regular protective social services programs available to actual and potential public assistance recipients and through the Adult Protective Services Project. This state and federally funded project was undertaken in cooperation with the Department of Mental Hygiene and 11 county welfare departments. It was designed to seek and test means through which public assistance recipients on leave from state hospitals and other recipients, just like them, but without state hospital status, could effectively be served by county welfare departments. This project is being phased out and incorporated into the county social services programs.

A plan to transfer case responsibilities to county welfare departments is currently underway. To the extent the county welfare department is prepared to assume these responsibilities and provide the appropriate level of social services, cases are transferred. In such instances, the division provides case consultation to the counties on request.

As a result of the requirements contained in the new mental health law, which is effective July 1, 1969, the division may assist in the provision of conservatorship services for gravely disabled mentally ill persons. The implementation of these services is currently being developed.

### **B. Eligibility**

The protective social services provided by the Community Services Division are available (1) to patients placed out of the state mental hospitals on leave of absence either in their own homes or in out-of-home placements, (2) to patients served in state, county, or private mental hospitals at county expense, and (3) to potential state hospital patients.



In very general terms, an individual might be considered as a potential state hospital patient and eligible for the protective services offered by the division, if:

1. He is at risk of being considered for state, county, or private mental hospital care as evidenced by unstable community adjustment associated with a major mental handicap or by a type of instability for which state hospital care would customarily be sought.
2. He possesses attributes which make an alternate plan of care feasible, in lieu of admission to a mental hospital.
3. The provision of available services are deemed adequate to maintain him in the community without jeopardizing his mental condition.
4. No other community agency is able to provide the same type and level of service.
5. He is a former mental hospital patient (discharge status) or has been referred by the county welfare department or other community mental health agency in accordance with an inter-agency agreement which has been approved by the department.

Social services are available to all patients on leave of absence from state hospitals and potential hospital cases. Placement in family care homes is available to post-hospital or potential hospital patients of any age or psychiatric disability (short of requiring nursing care) who need out-of-home care. If the patient has no resources available to pay for such care, the entire cost is paid by the state. If the patient has resources, the cost of family care may be paid entirely from those resources or supplemented by the state, depending upon the extent of the resources.

### **C. Benefits**

The primary function of the program is to 1) provide protective social services to potential mental hospital cases and patients on leave from state mental hospitals, and 2) arrange for out-of-home placements in lieu of hospitalization, which includes operation of the family care program and placement of the mentally retarded in private institutions.

The social services offered assist mentally handicapped persons to maintain income, secure suitable housing, receive necessary personal care and supervision; maintain their physical and mental health through proper recourse to physicians, dentists, psychiatric services and medication; enjoy programs of daily activity (including education, training, employment, hobbies, recreation and sociability); and sustain their morale through dignified living circumstances and opportunity to pursue personal goals. These services are complementary to those provided by medical and psychiatric agencies concerned with treatment and health maintenance procedures.

A major element of the social services program to former mental hospital patients is providing pre-release planning services. Prior to release from the hospital, plans are made for out-of-home care for patients who require such care.

The family care program provides for the placement of convalescent mental hospital patients and potential mental hospital patients in pri-

vate homes certified by the division. While in these homes, patients receive care and supervision in a family setting. Within the availability of funds, mentally retarded patients on leave from state hospitals may be placed in private institutions.

Upon referral from the mental hospital, community investigative work or social diagnostic information is provided for hospital inpatients. Social services are also offered to families of inpatients who require assistance not available through local agencies.

## V. Funding

From its inception until July 1, 1966, the services provided by the Bureau of Social Work, Department of Mental Hygiene were 100 percent state financed. However, the cost of out-of-home care for leave patients who received public assistance or had personal resources were paid from those sources.

After July 1, 1966, when the program was transferred to the Department of Social Welfare, the social services became eligible for federal funding under the 1962 service amendments to the Social Security Act. Services provided to actual and potential recipients are eligible for 75 percent federal subvention. Administrative expenses incurred in providing these services are subject to 50 percent federal subvention. Services to patients on leave who do not meet the federal requirements for eligibility continue to be financed by state funds.

## VI. Statistics

### A. Program Expenditures for Protective Services for the Mentally Handicapped

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	6,406	7,476	8,777	9,955	12,800
2. Administrative expenditures.....	52	59	58	n.a.	760
3. Direct program costs.....	6,354	7,417	8,719	9,955	12,040
Adult protective services.....	54	160	255	343	263
Mentally ill and mentally retarded.....	3,218	3,826	5,027	6,216	7,495
Subsistence.....	3,082	3,431	3,437	3,396	4,282



### B. Sources of Funds for Protective Services for the Mentally Handicapped

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	36	120	179	3,534	4,877
State.....	6,370	7,356	8,598	6,421	7,923
2. Administrative expenditures					
Federal.....					486
State.....	52	59	58	n.a.	274
3. Direct program costs					
Federal.....	36	120	179	3,534	4,391
State.....	3,236	3,866	5,103	3,025	3,367
Subsistence					
State.....	3,082	3,431	3,437	3,396	4,282

### C. Caseload for Protective Services for the Mentally Handicapped

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Year-end active caseload.....	16,278	19,762	19,827	18,263	18,897
Mentally ill.....	13,746	16,676	16,545	14,739	14,654
Mentally retarded.....	2,532	3,086	3,282	3,524	4,243

n.a. Not available.

## SPECIAL SOCIAL SERVICES

Demonstration projects in public assistance were established by the Legislature to improve the administration of public assistance:

"... so as to minimize dependency and reduce the total costs of public welfare services by restorative and preventive measures, and to expand protective services for children and adults."<sup>1</sup>

It was the intent of the Legislature in enacting these provisions to provide state assistance to counties to encourage them to establish demonstration and experimental projects designed to achieve these objectives and to strengthen, extend, and improve public welfare services and their administration.

These provisions were also established to encourage organizations of recipients to conduct demonstration and experimental projects designed to promote a more effective and efficient system of public aid and services. It was intended to provide a mechanism for organized groups of recipients to mobilize their resources and contribute solutions to the economic, social and personal problems which tend to prolong dependency.

<sup>1</sup> *Welfare and Institutions Code*, Division 9, Part 6, Chapter 3, Section 18200.

State participation in the cost of any local project or activity is dependent upon the following qualifications placed upon the county plans:

1. The project or activity will be undertaken and directed by the county welfare department, with the exception of those plans submitted by an organization of recipients.
2. Such project activity may also be conducted by the State Department of Social Welfare in behalf of a group of counties.
3. None of the state funds will be used to offset or reduce the amount of county funds currently applied to or budgeted for ongoing administrative activities and services.
4. The employment of personnel with qualifications consistent with the disciplines required by the project, with the exception of plans submitted by organizations of recipients in which case the department shall be responsible for evaluative functions.
5. A system for maintaining records and methods of analyses which will permit accurate and regular evaluations of the results achieved by the project or activity.

Among the county projects approved by the Department of Social Welfare, priority is to be given to those which involve:

1. Efforts to minimize as much as possible, within the limits of state and federal laws, the administrative differences between the several categories of assistance.
2. Demonstrations in providing family service programs.
3. Employment counseling, training and placement programs for public assistance recipients.
4. Extension of rehabilitation and self-care services for handicapped and incapacitated persons not accepted for services offered by the Department of Rehabilitation.
5. Efforts designed to give particular attention to the family where dependency is associated with illegitimacy, parental behavior, delinquency, and other family relationship problems.
6. Coordinated use of medical, psychiatric and casework services with public assistance recipients.
7. Development of caseload management and case classification problems.
8. Homemaker services for families and adults.
9. Protective services for both children and adults.
10. Projects demonstrating use of preventive services related to dependency, family breakdown, or personal maladjustment.
11. Participation of county departments in community service programs, particularly in approaches to problems of the underprivileged presented by recipients of minority groups.

Programs and projects conducted under the Special Social Services are categorized under the following groupings of programs:

1. Specialized Social Service Programs in Public Assistance.
2. Specialized Services for Children.
3. Local Inspection and Licensure.
4. Social Services Administration Improvement Programs.
5. Services to Mentally Ill and Mentally Retarded.

Federal funding participation is available through demonstration grants authorized under various titles and amendments of the federal Social Security Act.

Expenditure statistics provided in this report under the Special Social Services only include the following program or project groupings:

1. Specialized Social Service Programs in Local Assistance.
2. Social Services Administration Improvement Programs.

The remainder of the program expenditures are shown in their respective program sections of this report. Since the expenditures for the above stated two program groupings are related to the improvement of the delivery of social services and do not represent direct benefits to public assistance recipients, these expenditures are functionally considered to be part of the administrative expenditures in the delivery of public social services and are treated as such in the summary of state-wide expenditures.

## VI. Statistics

### A. Total Expenditures for Special Social Services and Other Projects

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	1,961	3,385	2,855	2,624	1,267
2. Total administrative expenditures*.....	1,961	3,385	2,855	2,624	1,267
Specialized social service programs in local assistance ..	1,210	1,664	1,159	556	<sup>a</sup>
Social services administration improvement programs ..	751	1,721	1,696	2,068	1,267

### B. Sources of Funds for Special Social Services and Other Projects

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	1,369	2,621	2,038	1,757	816
State.....	592	764	817	867	451
2. Administrative expenditures					
Specialized social service programs in local assistance ..					
Federal.....	703	1,153	760	407	-----
State.....	507	511	399	149	-----
Social services administration improvement programs ..					
Federal.....	666	1,468	1,278	1,350	816
State.....	85	253	418	718	451

\* These program costs are considered as administrative expenditures, since they have been incurred for the improvement of service programs.

\* Programs were terminated June 30, 1967 or no program plans have been defined for budget year or they have been budgeted but no expenditures incurred.

## THE CALIFORNIA MEDICAL ASSISTANCE PROGRAM (MEDI-CAL)

### I. General Description

The purpose of CMAP (Medi-Cal) :

“ . . . is to afford basic health care and related . . . services . . . for those aged and other persons, including family persons who lack sufficient income to meet the costs of health care, and whose other assets are so limited that their application toward the costs of such care would jeopardize the person or family's future minimum self-maintenance and security.”<sup>1</sup>

### II. Program Background

Before Medi-Cal went into effect on March 1, 1966, some health care services were available to certain needy persons. Crippled Children Services (CCS), state mental hospitals, county hospitals, and local mental health programs were primarily supported by state and/or county funds. These programs continued to operate after Medi-Cal was instituted, although payment for services to some CCS beneficiaries under 21 was shifted to CMAP. Two programs, Public Assistance Medical Care (PAMC) and Medical Aid for the Aged (MAA), which had provided a fairly wide range of medical services to recipients of public assistance and certain medically needy persons were superseded by the new program.

PAMC provided mainly outpatient services for recipients of Aid to the Blind (AB), Aid to the Permanently and Totally Disabled (ATD), Old Age Assistance (OAS), Aid to the Potentially Self-supporting Blind (APSB), and Aid to Families with Dependent Children (AFDC).

Persons in these categorical aid programs were eligible to receive physicians' and dentists' services; diagnostic services; drugs and medical supplies; eye refractions and glasses; chiropractic and podiatric services; and other treatment and services within funding limits. The statutory maximum for average monthly payment per recipient was \$3.00 per AFDC child, \$6.00 per AFDC adult (limited to emergency dental care and out-patient rehabilitative services), and \$15.00 per recipient in other categorical aid programs.

A federal matching fund provided 50 percent of the PAMC funds for services to OAS recipients, while part of the federal public assistance grant (\$1.50 to \$3.00 per recipient per month) went into PAMC funds for all categories of aid except APSB. The remainder of the costs of the program were paid primarily by the state, with counties contributing \$33.00 per month for each recipient of OAS, AB, APSB and ATD.

MAA was largely a program which provided inpatient medical care for persons 65 years of age or older who met requirements for reception of OAS funds or did so with the exception of residence requirements. Authorized by the Kerr-Mills amendments to the federal Social Security Act in 1960, it was implemented in California by the Rattigan-Burton Act of 1961 and went into effect January 1, 1962. It provided

<sup>1</sup> *Welfare and Institutions Code*, Division 9, Part 3, Chapter 7, Section 14000.



for payment to vendors for long-term care in hospitals and nursing homes after the first 30 days of confinement and for up to 12 months of outpatient services following discharge from a hospital or nursing home.

On May 21, 1963, the program was expanded to include payment from the first day of admittance to a county hospital, county contract hospital, or nursing home (if transferred from a county or contract hospital). In any case, payment of hospital or nursing home costs for recipients were assumed by MAA when they exceeded \$2,000. Fifty percent of the expanded coverage was paid for by federal matching funds and 50 percent by the counties. The funding formula for the original programs included in MAA was 50 percent federal, 25 percent state, and 25 percent county. Vendor rates were set by the Department of Social Welfare with the approval of the Department of Finance except that county hospitals were placed on a cost reimbursable plan between October 1963 and July 1964.

A wide variety of inpatient and outpatient hospital services to all indigent persons was provided by county hospitals. Not only were the costs of each hospital borne by the particular county in which it was located, but the setting of standards for the determination of medical indigency was also delegated to each county government. With the advent of Medi-Cal, both responsibility for setting standards for determination of medical indigency and a major share of the costs for hospital services were assumed by the state and federal governments. County hospitals were encouraged to integrate with the system of private and other public hospitals which could provide such services.

The major reason for the foregoing changes in health care services to the medically indigent was the passage in 1965 of major congressional amendments to the federal Social Security Act.

### **III. Federal Requirements**

Title XIX of the 1965 federal Social Security Act provided for federal aid in the establishment and maintenance by states of medical assistance programs. The purpose of such programs was "... to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or permanently and totally disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self care . . ."<sup>2</sup> The act provided certain guidelines which a state was required to follow to qualify for federal participation in such an expanded program of health care services for the medically indigent.

The state program was required to:

1. Be in effect in all political subdivisions of the state.
2. Provide at least state sharing of expenses to a minimum of 40 percent of the non-federal portion of expenditures.
3. Provide a single administrative or supervisory agency.

<sup>2</sup> *Federal Social Security Act*, Title XIX, Section 1901.



4. Make provisions for fair hearing for those denied aid.
5. Provide a merit system for personnel.
6. Make such reports as the Secretary of Health, Education and Welfare might request.
7. Restrict use of information about recipients to strictly administrative purposes.
8. Provide an opportunity for all who wished to make application to do so.
9. Designate a state agency for setting and maintaining institutional standards.
10. Provide medical services to public assistance recipients at a level equal to or better than that formerly provided.
11. Promote cooperation between the Medi-Cal agency and other state agencies providing medical or rehabilitative services.
12. Provide for professional determination of blindness and disability.
13. Include some institutional and noninstitutional care and, by July 1967, provide at least inpatient hospital, outpatient hospital, laboratory and X-ray, skilled nursing home and physicians' services.
14. Provide medical assistance for eligible state residents who were out of state.
15. Have a comprehensive state program for mental health with periodic review and alternate health plans for any elderly inmates of mental institutions included as recipients of assistance under the program.
16. Pay reasonable costs of inpatient hospital care.

In addition to the above federal requirements for positive state actions in qualifying for federal participation in medical assistance, the federal Social Security Act of 1965 contained certain prohibitions on participating states. They were prohibited from:

1. Making any charge for hospital care or any charge for other services that was unrelated to the income and resources of the recipient.
2. Instituting any property liens or other recovery provisions for assistance which had been legally and properly paid.
3. Instituting an age requirement exceeding 65 years of age. (Requiring persons to be more than 65 years of age before extending Old Age Assistance and Medi-Cal to them.)
4. Excluding (after July 1, 1967) any dependent children under 21.
5. Providing any residence requirements for inhabitants of the states who were U.S. citizens.
6. Claiming federal reimbursement for other than administrative expenses involved in providing inpatient care for persons in mental or tuberculosis hospitals who are under 65 years of age.

Within the federal guidelines, states were encouraged by the availability of federal financial participation to offer a wide variety of health

care and related services to those persons who qualified for assistance. The federal standards of qualification involved either eligibility for public assistance or "medical indigence." Medical indigence was based on the income standard of the state's most liberal public assistance program.

In 1967, Congress moved to reduce expanding costs of the state medical assistance programs. Public Law 90-248 limited the definition of medically indigent for purposes of federal financial participation to those with an income of not more than 150 percent of a state's AFDC standard. This became effective on July 1, 1968, and on January 1, 1969, the standard tightened to 140 percent of AFDC, and to 133 percent on January 1, 1970.

#### **IV. State Implementation**

California's CMAP (Medi-Cal) program, passed in late 1965 and implemented March 1, 1966, took advantage of this federal legislation and established a program in conformance with the federal guidelines. Medi-Cal included most of the types of services to every category of recipient required by the federal law. In some areas, it provided services to groups for whom the costs were not eligible for federal reimbursement.

##### **A. Organization and Administration**

The Medi-Cal program was administered through the newly-created Health and Welfare Agency's Office of Health Care Services in cooperation with other public and private agencies. As of September 14, 1968, the Health and Welfare Agency ceased to exist and the Office of Health Care Services became the Department of Health Care Services under the newly-created Human Relations Agency. The Director of the Department of Health Care Services became the single agency head for CMAP.

Determination of eligibility to participate in the program is the responsibility of county welfare departments. Prior authorization of those health care services which the program requires to be authorized before performance has been the responsibility of either county social welfare departments or county health departments; however, legislation passed in 1968 provided the basis for an assumption of this function by consultants employed by the State Department of Health Care Services. This state assumption of the responsibility for prior authorization will take place over a two year period. Blue Cross North, Blue Cross South, and Blue Shield (CPS) were engaged to process the claims of providers of medical care, determine the validity and correctness of the claims, and make payments to the providers.

Fees of all providers except physicians and hospitals were required to be "reasonable," thus allowing the state to have a degree of control over the costs of services through the establishment of fee schedules. The State Department of Finance has promulgated schedules of maximum allowances for most providers. Physicians' fees were required to be what was "usual and customary" rather than subject to a fixed fee schedule. An economy move, in September of 1967, froze physicians'

fees at the sixtieth percentile of prevailing charges as of January of that year, and imposition of a fee schedule by the administrator was permitted if he found it necessary. Modification of the method of reimbursement for "usual and customary" fees was required if program expenditures for physicians' services exceeded estimates by 10 percent.

### **B. Eligibility**

The California program establishes two groups of recipients.

Group I consists of:

1. All recipients of public assistance (OAS, AB, APSB<sup>3</sup> ATD, and AFDC).
2. Non-recipient children from 16 to 21 years of age who are members of AFDC families, and children living in foster care homes whose needs are met wholly or in part by public funds.
3. Any person who is eligible for categorical aid but does not receive a cash grant.
4. Any person who meets all qualifications for categorical aid except the state's residence requirement.

The benefits available to those who qualified as Group I recipients were somewhat more comprehensive than those available to Group II recipients. Benefits available to CMAP recipients are listed in the table on CMAP benefits.

Group II includes persons with the same characteristics as those receiving public assistance (*i.e.*, dependent children, aged, blind, disabled) but generally with an income above stated levels. To qualify for full payment of benefits provided under Group II, a person is limited to \$1,500 (\$3,000 a couple) in personal assets, exclusive of home, and income of less than \$162 a month (\$208 for two and increasing amounts for each in excess of two). For those whose income and/or assets exceed the maximum amount, all excess income or assets are spent to pay for health care costs before a person is eligible for participation. If and when the federal government participates, any person for whom costs of catastrophic illness or accident have exceeded 50 percent of his annual adjusted gross income may receive health care services under the program.

<sup>3</sup> APSB recipients receive Group I benefits, but the federal government does not reimburse the state for costs of services.

## MEDI-CAL BENEFITS

Benefit	Group I	Group II <sup>1</sup>
1. Inpatient Hospital Services	No limit, <i>except</i> 21 days for persons under 65 diagnosed as having tuberculosis, and 60 days per year for those under 65 with primary diagnosis of mental illness. No care for those under 65 in a tuberculosis or mental institution. Stay of more than 8 days in a noncounty or nonstate hospital requires prior authorization by Medi-Cal consultant.	No limit, <i>except</i> 21 days for persons under 65 diagnosed as having tuberculosis, and 60 days per year for those under 65 with primary diagnosis of mental illness. No care for those under 65 in a tuberculosis or mental institution. Stay of more than 8 days in a noncounty or nonstate hospital requires prior authorization by Medi-Cal consultant.
2. Nursing Home and Convalescent Home Services	Broad, uniform benefits are provided to recipients. Placement must be authorized by Medi-Cal consultant based on the need for this level of nursing care.	Broad, uniform benefits are provided to recipients. Placement must be authorized by Medi-Cal consultant based on the need for this level of nursing care.
3. Organized Hospital Outpatient Services	Broad, uniform benefits are provided to recipients.	All hospital outpatient and emergency room service incident to covered physicians' services.
4. Physician Services (Including Psychiatric)	Broad, uniform benefits are provided to recipients. Cosmetic surgery and more than 6 outpatient psychiatric visits in a 6 month period require prior authorization by Medi-Cal consultant.	Same as Group I except that eye refractions are available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
5. Laboratory, Radiological and Radioisotope Services	Broad, uniform benefits are provided to recipients.	Broad, uniform benefits are provided to recipients.
6. Rehabilitation Center Services <sup>2</sup> Inpatient Outpatient	Broad, uniform benefits are provided to recipients. Inpatient stay of more than 8 days in a noncounty or nonstate facility requires prior authorization by Medi-Cal consultant.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
7. Ambulance Services or Other Medical Transportation <sup>2</sup>	Broad, uniform benefits are provided to recipients. Some nonemergency transportation requires prior authorization by Medi-Cal consultant.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
8. Blood and Blood Substitutes <sup>2</sup>	Broad, uniform benefits are provided to recipients.	Broad, uniform benefits are provided to recipients.
9. Dental Services <sup>2</sup>	Broad, uniform benefits are provided to recipients. Total treatment plan costing more than \$35 requires prior authorization by Medi-Cal consultant.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
10. Chiropractic and Podiatric Services <sup>2</sup>	Broad, uniform benefits are provided to recipients.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
11. Optometric Services <sup>2</sup>	Broad, uniform benefits are provided to recipients. Services other than eye examination and refraction require prior authorization.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
12. Services of Physical, Occupational and Speech Therapists, Audiologists and Psychologists <sup>2</sup>	Broad, uniform benefits are provided to recipients. More than 6 visits in a 6 month period require prior authorization.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
13. Spiritual Healing <sup>2</sup>	Broad, uniform benefits are provided to recipients on an inpatient basis. No outpatient services.	Broad, uniform benefits are provided to recipients on an inpatient basis. No outpatient services.



## MEDICAL BENEFITS—Continued

Benefit	Group I	Group II <sup>1</sup>
14. Prescription Drugs and Medical Supplies as Listed in Drug Formulary <sup>2</sup>	Broad, uniform benefits are provided to recipients. Non-formulary drugs require prior authorization.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
15. Prosthetic and Orthotic Appliances <sup>2</sup>	Broad, uniform benefits are provided to recipients. All appliances or repairs costing more than \$50 require prior authorization.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
16. Eyeglasses, Prosthetic Eyes and Other Eye Appliances <sup>2</sup>	Broad, uniform benefits are provided to recipients. Services or appliances costing more than \$6, except for replacement of broken eyeglass lenses, require prior authorization.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
17. Hearing Aids <sup>1</sup>	Broad, uniform benefits are provided to recipients. All hearing aids and all repairs costing more than \$50 per repair service require prior authorization.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
18. Assistance Devices (e.g., Wheel Chairs, Traction Devices, Lifts) and Sick Room Supplies <sup>2</sup>	Broad, uniform benefits are provided to recipients. Purchase or cumulative rental or repair or maintenance, costing more than \$50 requires prior authorization.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the conditions for which beneficiary was institutionalized.
19. Home Health Care Services <sup>2</sup>	Broad, uniform benefits are provided to recipients.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.
20. Other Organized Out-patient Services (e.g., Short-Doyle)	Broad, uniform benefits are provided to recipients.	Available only for a period of 90 days following discharge from an inpatient care facility and only if the service relates to the condition for which beneficiary was institutionalized.

<sup>1</sup> States were permitted, but not required, to provide benefits to these individuals. The 1967 federal Social Security Act amendments required that such individuals, if they were given benefits, be provided with the first five benefits listed (i.e., "minimum coverage") or a certain number from the total list of benefits.

<sup>2</sup> If they chose to participate in the program, states were permitted, but not required, to provide these services to recipients.

After June 30, 1968, federal participation in basic and extended health services was broadened to include county mental health services and such community mental health agency (Short-Doyle) programs as inpatient, outpatient, emergency, diagnostic, and rehabilitative services.

## V. Funding

The 1965 federal Social Security Act provided for federal matching funds to pay approximately 50 to 83 percent of the cost and maintenance of approved state medical assistance programs. California receives about 50 percent federal reimbursement for its total program. When originally established, CMAP limited total state-county expenditures to a monthly coverage of \$18.25 a month per recipient.

In order to keep state-county expenditures within an average of \$18.25 a month per recipient, the Administrator of the Health and Welfare Agency was given discretion concerning the provision of services to be included in the program. Priorities for payment in case of insufficient funds were established which provided that minimum



coverage (*i.e.*, inpatient and outpatient hospital services, laboratory and X-ray services, skilled nursing home services, and physician's services) was to be provided public assistance recipients. Other services, to those on public assistance and services to other medically indigent persons who qualified for Medi-Cal, were to be provided to the extent that funds were available. The limit of \$18.25 a month per recipient on overall state-county expenditures was exceeded in fiscal 1966-67 and the Legislature removed the limitation and authorized payment of the state-county portion of the deficit from the General Fund.

A move by the Health and Welfare Administrator to make cuts in the program was largely declared illegal, and legislation requiring him to make, to the extent feasible, proportionate reductions in all services rather than eliminating any became effective on August 25, 1967.

The 1968 amendments to the Welfare and Institutions Code require preparation of a schedule by the Department of Health Care Services of anticipated monthly costs for each category of the Medi-Cal program for the fiscal year. Whenever any category of services exceeds the amount scheduled for it by 10 percent, the method or amount of payment is to be modified to assure that the scheduled expenditure for the fiscal year is not exceeded. However, conflict with federal law is to be avoided; no service is to be reduced by more than 10 percent; and postponement of elective services through changes in standards of approval for prior authorizations must make provision that those in greatest need are the first to receive the services.

The federal government pays 50 percent of most state and county administrative costs and 75 percent of certain others (*e.g.*, physicians or the administrative staff of the Department of Health Care Services). About 56 percent of total state costs and 59 percent of total county costs for administration of the program are federally reimbursed.

Each county's share in the funding of CMAP is computed through the use of a complicated formula based primarily on (1) the county's 1964-65 level of medical care costs and (2) population changes in the county since 1964-65.

To protect the counties from excessive growth of county health care expenditures for services to persons not eligible under the federal program, counties are given an optional method of sharing in the cost of the Medical Assistance Program. Counties electing this "optional" method are assured that their costs of providing county health care services which are uncompensated from any source will not exceed the 1964-65 costs, after adjustments have been made for population changes. Uncompensated county costs above this amount are funded by the state; however, effective beginning fiscal 1967-68, the Legislature placed a ceiling on the total amount of state funds available for purposes of such reimbursement. By September 1968, 30 counties had elected the option.

Counties which have not chosen the option continue to pay the costs of services provided to indigent persons not covered by CMAP.

## VI. Statistics

**A. Total Medical Care/Services Expenditures: Including Public Assistance Medical Care (PAMC),\* Medical Assistance for the Aged (MAA)\* and California Medical Assistance Program (Medi-Cal)†**

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	149,068	192,589	418,621	1729,200	706,216
2. Total administrative expenditures <sup>2</sup> .....	5,080	6,195	9,668	19,500	28,100
State administration.....	578	898	2,513	12,700	24,100
County administration.....	4,502	5,297	7,155	6,800	4,000
3. Total medical care expenditures.....	143,988	186,394	408,953	709,700	678,116
PAMC*.....	63,683	77,334	52,353		
OAS.....	41,169	41,429	27,408		
AB/APSB.....	1,953	2,718	1,671		
AFDC-FG, U, Bfill.....	11,327	17,520	12,637		
ATD.....	8,934	12,667	10,637		
MAA*.....	80,305	109,060	82,600		
Medi-Cal† <sup>3</sup> .....			1274,000	709,700	678,116
Group I.....					478,953
Group II.....					66,064
County option.....			33,200	123,800	133,099

\* Program was terminated on February 28, 1966.

† Program was initiated on March 1, 1966.

<sup>1</sup> Subsequent to compilation of this report, expenditure data have been revised due to audit.

<sup>2</sup> Administrative expenditures only shown for Medi-Cal and Medical Assistance for the Aged (MAA), administrative expenditures for other programs shown under respective program statistics.

<sup>3</sup> Assistance expenditures include services provided to cash grant recipients (OAS, AB, ATD, AFDC) and medically needy persons, Group I (recipients) and Group II (non-recipients).

**B. Sources of Funds: Public Assistance Medical Care (PAMC), Medical Assistance for the Aged (MAA) and California Medical Assistance Program (Medi-Cal)**

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	84,300	104,124	196,671	303,900	287,600
State.....	40,215	55,767	135,899	225,200	208,100
County.....	24,463	32,698	86,051	200,100	210,516
2. Total administrative expenditures*					
Federal.....	2,959	3,573	5,208	9,750	14,050
State.....	242	398	1,223	6,350	12,050
County.....	1,879	2,224	3,237	3,100	2,000
3. Total medical care†					
Federal.....	81,431	100,551	191,463	294,150	273,550
State.....	39,973	55,369	134,676	218,850	196,050
County.....	22,584	30,474	82,814	196,700	208,516
PAMC					
Federal.....	41,278	46,021	29,463	-----	-----
State.....	21,130	29,945	21,846	-----	-----
County.....	1,275	1,368	1,044	-----	-----
MAA					
Federal.....	40,153	54,530	41,300	-----	-----
State.....	18,843	25,424	18,830	-----	-----
County.....	21,309	29,106	22,470	-----	-----
Medi-Cal					
Federal.....	-----	-----	120,700	294,150	273,550
State.....	-----	-----	94,000	218,850	196,050
County.....	-----	-----	59,300	196,700	208,516

\* Includes administrative expenditure sources of funds for MAA and Medi-Cal; PAMC administrative costs and sources of funds are included in the respective categorical aid programs statistics, since they are not separable from those program administrative statistics.

† Includes sources of funds for all programs (PAMC, MAA, Medi-Cal).

**C. Participant Count and Payment: Public Assistance Medical Care (PAMC), Medical Assistance for the Aged (MAA) and California Medical Assistance Program (Medi-Cal)**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>1. Average number of monthly participants</b>					
<b>A. PAMC</b>					
OAS.....	266,374	270,847	275,941	-----	-----
AB.....	12,164	12,283	12,349	-----	-----
APSB.....	98	126	66	-----	-----
AFDC—Total.....	409,722	524,451	607,820	-----	-----
Families.....	106,301	126,643	146,908	-----	-----
Children.....	303,476	382,595	445,447	-----	-----
BHI.....	16,945	18,760	20,839	-----	-----
ATD.....	41,813	61,464	83,355	-----	-----
<b>B. MAA</b>					
Inpatient.....	20,316	26,009	30,415	-----	-----
Outpatient.....	586	1,344	2,040	-----	-----
<b>C. Medi-Cal—Total</b>			1,133,529	1,298,193	1,475,661
Group I.....			1,103,954	1,217,773	1,366,074
Group II.....			29,575	80,420	109,587
<b>2. Fiscal year ending, number of participants</b>					
<b>A. PAMC</b>					
OAS.....	268,014	273,227	280,959	-----	-----
AB.....	12,430	12,353	12,399	-----	-----
APSB.....	n.a.	n.a.	n.a.	-----	-----
AFDC, total.....	477,761	559,494	644,616	-----	-----
ATD.....	50,402	74,850	91,160	-----	-----
<b>B. MAA</b>					
Inpatient.....	n.a.	n.a.	n.a.	-----	-----
Outpatient.....	n.a.	n.a.	n.a.	-----	-----
<b>C. Medi-Cal—Total</b>			1,155,943	1,428,586	1,523,021
Group I.....			1,109,053	1,332,945	1,391,552
Group II.....			46,890	95,641	131,469
<b>3. Average monthly payment per participant for medical care</b>					
<b>A. PAMC</b>					
OAS.....	\$13.01	\$13.70	*\$12.53	-----	-----
AB.....	13.84	19.14	*17.68	-----	-----
APSB.....	15.77	12.06	*10.08	-----	-----
AFDC—U, FG				-----	-----
Families.....	8.40	10.95	*10.62	-----	-----
Children.....	2.94	3.63	*3.50	-----	-----
BHI.....	3.02	3.89	*4.27	-----	-----
ATD.....	20.46	19.38	*18.44	-----	-----
<b>B. MAA</b>					
Inpatient.....	329.09	348.85	338.86	-----	-----
Outpatient.....	10.89	11.16	9.11	-----	-----
<b>C. Medi-Cal—Total</b>			†\$33.77	†\$34.08	†\$33.23

\* Includes payments made through cash grant program of Medi-Cal.

† As of July, 1966.

‡ Based on total number of potential users, other programs' average monthly payments are based upon actual users.

n.a. Not available.

## VOCATIONAL REHABILITATION PROGRAMS

### I. General Description

The purpose of vocational rehabilitation is:

“ . . . to help disabled adults overcome their handicaps and secure employment. It has been defined as the restoration of disabled persons to the fullest physical, mental, vocational, and economic usefulness of which they are capable.”<sup>1</sup>

### II. Program Background

In 1920, Congress passed the first Vocational Rehabilitation Act, commonly called the Smith-Pess Act. It provided for federal matching grants to the states for the rehabilitation of the physically handicapped. Its purpose was to assist the states, by means of federal grants, to help disabled men and women find productive, gainful employment. Under the program, the federal grants to state agencies were available for providing services of various types to the disabled. Such services included job training, counseling and guidance, job placement, provision of artificial limbs and other prosthetic devices. *It did not include medical services designed to restore physical capacities.* States were required to match federal grants on a dollar-for-dollar basis. California opened its first state vocational rehabilitation office in 1921.

Other congressional legislation which affected the rehabilitation program occurred in 1933 with the passage of the Wagner-Peyser Act. This act established a system of state employment offices with special job placement services for the handicapped and provided for close cooperation with state rehabilitation agencies for unemployed handicapped persons. The Randolph-Sheppard Act (Public Law 732) passed in 1936, designated state vocational rehabilitation agencies as the official licensing agencies for vending stands which were to be operated by blind persons in federal buildings.

The Vocational Rehabilitation Act was amended by the Barton-LaFollette Act (Public Law 113) in 1943. The most important change made by this act was the authorization for state agencies to provide medical services such as surgery, hospitalization and other treatment designed to reduce or eliminate the disability. The amendments also improved financing, extended service to the mentally ill, the mentally retarded, and the blind, and added physical restoration services.

State expansion of the program began in 1945 when the California Legislature passed the Crowley Act extending the vending stand program for blind operators to state, county and other municipal buildings. In 1952, the Vocational Rehabilitation Service (VRS), with the approval of the state Legislature, changed their program emphasis from serving large numbers of minimally handicapped persons to serving those in greatest need of rehabilitation services.

In 1953, the Legislature enacted Senate Bill 15, called the Vocational Rehabilitation Act. It gave permanent status to VRS and permitted the Legislature to determine the level of service. The act allowed the Legislature to finance the VRS program beyond the minimum required by the federal act.

<sup>1</sup> *Vocational Rehabilitation, An Investment in Human Dignity, 1962 Annual Report* (Vocational Rehabilitation Service, California State Department of Education), pp. 1 and 2.



Federal legislation which influenced the program occurred in 1954, which amended the Vocational Rehabilitation Act to provide for the allocation of federal funds to the states on a per capita income basis. The amendments also established grants for program improvement, demonstration and research projects, for expansion of rehabilitation facilities, and to colleges and universities for training programs in rehabilitation services.

When the Social Security Act was amended in 1956 to establish a system of disability insurance benefits payable to insured workers unable because of physical or mental disability to gain employment, it was agreed that applicants for these benefits would be considered for referral to vocational rehabilitation services. (In most states disability determination is made by state vocational rehabilitation agencies.)

The state Legislature authorized the Vocational Rehabilitation Service in 1959 to provide consultative services to public and private organizations interested in operating workshops for the disabled.

### III. Federal Requirements

The Vocational Rehabilitation Program is administered by the Social and Rehabilitation Service of the Department of Health, Education and Welfare. To be approved under the Vocational Rehabilitation Act, the state plan for vocational rehabilitation must meet certain general requirements and describe procedures in relation to administration of the program, casework practices, and services to be provided.

In relation to the *administration* of the program, the state plan must:

1. Designate a single agency for the administration, supervision and control of the state plan, except when under the state's law, a state blind commission or another agency, provides assistance and services for the adult blind.
2. Be in effect in all political subdivisions of the state and provide for financial participation by the state.
3. Provide that vocational rehabilitation under the plan shall be made available only to employable individuals or those who can become employable as the result of vocational rehabilitation.
4. Establish a system of selection for personnel including policies against discrimination on the basis of sex, race, creed, color or national origin.
5. Provide that the state agency will make such reports, in the form and containing such information as the administrator may from time to time require.
6. Provide that no portion of any money paid to the state under this act shall be applied to the purchase, erection or rental of any buildings, or for the purchase or rental of any land.
7. Describe the arrangements made to secure adequate medical consultation and to assure the availability of medical consultative services of high quality.
8. Provide adequate staff to carry out agency functions pertaining to workshops and rehabilitation facilities in relation to standard setting, effective utilization, administration of grants and services, and the establishment of such facilities.

9. Provide a program of staff development in order to improve the operation of the program and to promote the provision of high quality services.
10. Provide for the establishment and maintenance of cooperative working relationships with federal, state, and other public and private organizations which offer some types of rehabilitation services to handicapped individuals.

In setting forth the *cascwork practices* to be used in providing vocational rehabilitation services, the state plan must:

1. Describe the policies and methods to be followed in determining eligibility for services, except that ineligibility cannot be based solely on the type of disability or an upper or lower age limit.
2. Describe the policies and methods to be followed in establishing the need for an extended evaluation in order to determine potential for rehabilitation.
3. Provide that a plan of vocational rehabilitation which specifies the objective will be formulated for each client.
4. Provide that, prior to and as a basis for formulating the rehabilitation plan, there will be a thorough diagnostic study.
5. Provide that an individual plan of vocational rehabilitation will be formulated for each client to whom services will be provided.
6. Describe the methods to be followed in handling referrals and application for services.
7. Set forth the criteria to be used in selecting eligible individuals for services when services cannot be provided to all eligible persons who apply.
8. Provide for fair hearings and administrative review of agency actions.
9. Set forth the standards and policies established for the counseling of handicapped individuals which will assure adequate services in connection with problems related to vocational adjustment and to develop an understanding of capacities and limitations in selecting a suitable occupational goal.
10. Provide that no economic needs test will be applied as a condition of furnishing diagnostic and related services, counseling or placement.
11. Provide that full consideration will be given to any benefit available to the handicapped individual by way of pension, compensation or insurance which will, in whole or in part, meet the cost of certain vocational rehabilitation services.
12. Provide for the adoption of such regulations as are necessary to assure the confidentiality of information.

In stating the *services* to be provided in the Vocational Rehabilitation Program, the state plan must:

1. Provide for the establishment of rates of payment for diagnostic services, training, and physical restoration services purchased for clients.

2. Set forth the policies to be followed in furnishing training, physical restoration services, transportation, tools, equipment, and other goods and services rendered to handicapped individuals.
3. Provide that maintenance will be furnished only to enable an individual to benefit from other vocational rehabilitation services.
4. Provide that the state agency will assume responsibility for placement of individuals accepted for service, establish standards for determining if the client is suitably employed and provide a reasonable period of follow-up after placement.

Additional requirements must be met if the state wishes federal financial participation in establishing or managing a business enterprise program or in establishing public or nonprofit workshops and rehabilitation facilities.

The Regional Commissioner of the Social and Rehabilitation Service approves any plan which he believes feasible and which fulfills the federal requirements.

On November 8, 1965, the 89th Congress passed additional amendments to the Vocational Rehabilitation Act. Through a broadened legal and financial base, the federal-state program now reaches a larger number of disabled persons. The matching formula ratio was increased to three federal dollars for each state dollar, and the definition of disability was broadened to include *behavioral disorders* which may result from vocational, educational, cultural, social, environmental or other factors.

The amendments also contained several provisions for improvement of existing workshops for the handicapped and authorized funds to help construct new rehabilitation centers and workshops. The federal share varies from one-third to two-thirds of the total cost. Funds are also provided for assistance in initial staffing and for constructing residential accommodations in connection with workshops for the mentally retarded.

The 1965 federal amendments further provided for five-year special grants to be made to states for two general purposes:

1. The development of methods or techniques for providing services which are new to the state.
2. Projects to serve those who have catastrophic or particularly severe disabilities.

In any state that applies for and receives a special grant, federal funds provide 90 percent the first three years and 75 percent the remaining two years of each five-year grant. This provision replaced the former program of extension and improvement grants to states.

In 1968, the Vocational Rehabilitation Act was again amended by Congress. The new amendments expand the Vocational Rehabilitation Program by authorizing a program of vocational evaluation and work adjustment to serve the *disadvantaged*—including physically or mentally handicapped individuals, as well as people disadvantaged by reason of advanced age or other conditions which constitute a barrier to employment.

The 1968 amendments extend the program of support for construction and staffing of rehabilitation facilities by public and private nonprofit organizations on a matching basis. The program also enables such groups and agencies to plan for development of a specific project. An important new provision permits state agencies to expand up to 10 percent of their basic service funds to construct new buildings, as well as to expand or alter existing facilities.

The 1968 amendments broaden the rehabilitation services in the following ways:

1. Authority is given to state agencies to waive the provision that all rehabilitation services must be equally available throughout the state, so that opportunities may be utilized within certain jurisdictions where special funding with other agencies might be available.
2. State plan requirements also provide for continued statewide studies of the needs of the handicapped and how these needs are met.
3. Follow-up after job placement is made to assist handicapped individuals to maintain their employment, after the case is closed.
4. Services to other family members are authorized, when necessary to the rehabilitation of the handicapped individual (such as training the wife of a blind person to work with him in a vending stand).
5. State agencies can provide facilities and services which promise to contribute substantially to the rehabilitation of groups of disabled persons, but which are not necessarily related to the plan for any one individual.
6. A period of four years and three months is set for the duration of initial staffing grants for rehabilitation facilities compared with the one year allowed previously.

The 1968 federal amendments to the Vocational Rehabilitation Act also provide for allotments of federal funds to each state agency to augment state appropriations for vocational rehabilitation services. Funds are allotted by a formula involving the state's population and fiscal capacity measured by its per capita income.

Recent legislation in related laws which have an impact on the requirements and services of vocational rehabilitation are:

1. *Social Security Amendments of 1965*. These amendments provide that state vocational rehabilitation agencies are to be reimbursed from social security trust funds for the cost of rehabilitation services furnished to selected individuals who are entitled to disability insurance benefits or to disabled child's benefits. The objective of this provision is to make it possible for more disability insurance beneficiaries to receive vocational rehabilitation services.
2. *Public Law 89-601*. This law amends the Fair Labor Standards Act and delegates to state rehabilitation agencies certain responsibilities in connection with the issuance of sub-minimum wage certificates covering handicapped persons.



#### IV. State Implementation

##### A. Organization and Administration

In the 1963 General Session, the Governor issued a special message on rehabilitation of the handicapped in which he recommended legislation to create a new Department of Rehabilitation. A bill to create this department was introduced by Senator Joseph Rattigan. With the passage of this legislation (1963 Stats., Chapter 1747), the Department of Rehabilitation was established on October 1, 1963. This legislation consolidated seven functions formerly administered by the Department of Education: Vocational Rehabilitation Service, Disability Certification Program, Business Enterprise Program for the Blind, Field Rehabilitation Services for the Blind, Opportunity Work Centers for the Blind, California Industries for the Blind, and Orientation Centers for the Blind.

In this description, the rehabilitation programs are divided as follows:

1. Vocational Guidance and Placement.
2. Cooperative Programs.
3. Special Programs for the Blind.

*Vocational Guidance and Placement* services to disabled citizens throughout the state are provided through field offices which serve all areas of the state. Location for the field offices are selected to be as close as possible to the people who need them. These offices serve people with all kinds of physical and mental disabilities. A disabled person may be referred by another agency or individual or self-referred. Each disabled person (client) has a counselor who helps him develop a plan of services either by using other community resources or by purchasing the needed services from the community.

In line with the objectives of the program to reduce welfare costs and prevent economic dependency, counselors are provided to work closely with local welfare departments and to serve welfare recipients. The Department of Rehabilitation also maintains vocational rehabilitation units in all of the state service centers. In addition, staff is provided to serve six other poverty areas in the state.

In addition to the vocational guidance and placement services provided routinely to disabled and handicapped persons, special projects are established on a limited-term basis to expand or innovate services.

Two of these special projects, the Psychiatric Follow-up Study and the Emergency and Reconstructional Rehabilitation Services Following Flood Disaster, have been terminated as the studies are completed.

Three special programs, Services to Industrially Injured, Cooperative Welfare Program, and Rehabilitation of OASDI Recipients, have been continued under ongoing regular program operations. The Planning Program for the Mentally Retarded has been incorporated into the administrative functions of one of the divisions in the department.

Special projects which have been continued are given in the following chart:



## SPECIAL PROJECTS

Program	Services provided	Funding
Work Training Center Program	Under a contractual arrangement with the Department of Social Welfare, work training center experience is provided to approximately 200 severely mentally retarded recipients of ATD.	25% state (SDSW) 75% federal
Planning Improvement of Workshops and Rehabilitation Facilities	Develop a statewide plan for improvement of workshops and rehabilitation facilities.	90% federal 1967-68 75% federal 1968-69
Vocational Rehabilitation Project for Economically Depressed Areas of Los Angeles County	Demonstrate that a comprehensive program of rehabilitation services can improve the vocational, economic and social status of persons who are unemployed or underemployed for a variety of reasons associated with disability, poverty and social deprivation.	Jointly funded with OEO 100% federal
Rehabilitation of Narcotic Addicts in Resident Facilities	Provide vocational training to narcotic addicts living at a residential facility who are attempting to rehabilitate themselves.	90% federal
Technical Consultation for Services to Clients with Catastrophic Disabilities	Assess the needs of severely physically disabled clients, specifically in the area of special mechanical assistive devices which may be required for them to engage in an occupation.	5-year grant: 90% federal first 3 years, 75% thereafter
Vocational Rehabilitation Services in a Spinal Cord Injury Center	Provide services to severely disabled patients at the Spinal Cord Injury Center at Rancho Los Amigos Hospital in Los Angeles County.	5-year grant: 90% federal first 3 years, 75% thereafter
Vocational Rehabilitation of Myocardial Revascularized Clients	Provide vocational rehabilitation services to individuals who have undergone cardiac surgery at Mt. Zion Hospital in San Francisco.	5-year grant: 90% federal first 3 years, 75% thereafter
Vocational Rehabilitation of Narcotic Addicts (California Rehabilitation Center)	Provide vocational rehabilitation services to narcotic addicts at a state correctional facility, with a continuation of services for those individuals who return to the central Los Angeles area.	5-year grant: 90% federal

The *Cooperative Rehabilitation Service* programs utilize existing staff and resources of cooperating agencies in combination with vocational rehabilitation staff to provide coordinated rehabilitation services to disabled individuals who are receiving care in programs operated by the cooperating agencies. These services are aimed at promoting the optimal vocational functioning of disabled individuals while receiving specialized care and continuing into the community after their release.

As part of the cooperative rehabilitation programs, the Department of Rehabilitation maintains vocational rehabilitation units in eight state mental hospitals and four state correctional facilities. Through the provision of vocational adjustment services within the institutions and the continued services to individuals after they leave the institution, the Department of Rehabilitation assists these disabled people to become independent in the community, thus reducing public cost of maintaining them in institutions.

The department also operates vocational rehabilitation units in cooperation with 28 school districts, four county departments of education, the California School for the Deaf at Berkeley, 11 alcoholic clinics, and two community mental health programs.

The following chart shows the various cooperative rehabilitation programs:

PROGRAM	OBJECTIVES	ADMINISTRATION	SERVICES	ELIGIBILITY	FUNDING
Vocational Rehabilitation Program for the Mentally Ill and Mentally Retarded	Prepare mentally ill and mentally retarded to move out of the institution and make a successful adjustment in the community.	The Department of Rehabilitation operates programs in 8 state hospitals and 12 community mental health programs in cooperation with the Department of Mental Hygiene.	Full range of vocational guidance and placement services	Institutionalized mentally impaired persons who can benefit from vocational rehabilitation services	75% federal (Rehabilitation) 25% state (Mental Hygiene)
Residential Rehabilitation Center for the Mentally Retarded	Serve hospitalized retarded who have some potential for benefiting from rehabilitation services with an ultimate goal of living and working in the community.	The Department of Rehabilitation operates a residential rehabilitation program for the retarded in cooperation with the Department of Mental Hygiene at Agnews State Hospital.	Full range of vocational services with emphasis on sheltered workshop training	Hospitalized retarded who have potential for gaining employment and living and working in the community	75% federal (Rehabilitation) 25% state (Mental Hygiene)
Regional Diagnostic Centers for the Mentally Retarded	Help the mentally retarded find vocational skills.	The Department of Rehabilitation provides staff and funds for the Regional Centers.	Full range of vocational guidance and placement services	Clients at the Diagnostic Centers	75% federal (Rehabilitation) 25% state (Diagnostic Center)
Rehabilitation Services to Disabled Young People	Develop rehabilitation programs in cooperation with local school districts and state schools for the handicapped.	The Department of Rehabilitation operates vocational rehabilitation units in cooperation with 28 school districts, 4 county departments of education, and the state-supported educational facility for the deaf at Berkeley.	Diagnostic services, work evaluation, vocational counseling, work experience, on-the-job training and job placement and followup	Grades 9 through 12, frequently with supplemental training beyond grade 12	75% federal (Rehabilitation) 25% state and local (Education and Local School Districts)
Vocational Rehabilitation Programs for the Disabled in cooperation with the State Youth and Adult Correction Agency	Assist in the total rehabilitation of public offenders by providing vocational rehabilitation services to obtain suitable employment.	The Department of Rehabilitation operates vocational rehabilitation units in 4 correctional facilities and a continuation of the services in the community.	Full range of vocational services with emphasis on evaluation and work adjustment	Public offenders in the Department of the Youth Authority and Department of Corrections institutions and community programs	75% federal (Rehabilitation) 25% state (Youth Authority and Corrections)
Vocational Rehabilitation Programs in cooperation with the Department of Public Health and Local Alcoholic Clinic Program	Develop programs for the rehabilitation of alcoholics.	The Department of Rehabilitation operates one alcoholism clinic and develops rehabilitation programs in cooperation with local alcoholism clinics which are under direct contract with the Division of Alcoholism in the Department of Public Health.	Full range of vocational guidance and placement services	Alcoholics who seek clinic services and can benefit from rehabilitation services	75% federal (Rehabilitation) 25% state (Public Health)
Grants to Public and Private Organizations and Individuals for Workshop or Rehabilitation Facilities	Establish or expand the availability of workshop and rehabilitation facilities.	The Department of Rehabilitation distributes federal funds to public and private organizations and individuals.	Promote development of additional workshops and facilities for client work evaluation, training, placement and treatment	Approval of grant by the Department of Rehabilitation	75% federal (Rehabilitation) 25% private

In addition to the above programs, two smaller programs are included in the Cooperative Rehabilitation Services. One utilizes about \$100,000 of federal funds for staff development and training programs. The other is a three-year demonstration project initiated in fiscal year 1967-68 in which \$30,000 of federal funds are used to hire industrial sales-placement engineers to serve as liaison between industry and the California Industries for the Blind and the Opportunity Work Centers for the Blind. The purpose of the project is to develop work contracts for the workshops and placement opportunities in industry for handicapped people.

The *Special Programs for the Blind* are designated to help blind persons who need and desire special assistance to become gainfully employed, or at least independent of attendant services or institutional care.

A chart showing special programs for the blind follows:

SPECIAL PROGRAMS FOR THE BLIND CHART

PROGRAM	OBJECTIVES	ADMINISTRATION	SERVICES	ELIGIBILITY	FUNDING
California Orientation Center for the Blind (OCB)	To teach a blind person how to live in our society (daily living patterns), and learn skills to enable him to participate in job training and other vocational services.	This is a residential rehabilitation center for the blind. It has a capacity of 40 clients and a projected workload of 120 clients per year.	All clients receive instruction in mobility, communication skills (braille and typing), techniques of daily living and re-orientation, and reorientation of hand skills through shop work, sewing, etc.	Referrals to the Center must be made by rehabilitation counselors or counselor-teachers for the blind. Referrals are of the younger working age group who have prospect of becoming vocationally rehabilitated.	Full federal matching funds under the Vocational Rehabilitation Act as a facility devoted to vocational rehabilitation.
Field Rehabilitation Services for the Adult Blind	To provide pre-vocational rehabilitation services to the blind and to provide counseling and orientation to the families of the newly blind.	Counselor-teachers operate out of district offices and provide services to clients in their homes.	Provides blind persons with training in braille, home-making, grooming and general orientation to blindness.	Clients are in the work age group (approximately 14 to 64 years of age).	Some matching federal funds under the Vocational Rehabilitation Act.
Opportunity Work Centers (OWC)	To provide work training and employment to blind or otherwise disabled persons.	Three rehabilitation workshops which provide services to 100 clients. All referrals come from vocational rehabilitation counselors.	Clients learn assembly and packaging jobs used in shops.	All clients have to be active vocational rehabilitation cases.	Some federal matching funds.
California Industries for the Blind (CIB)	To train and successfully place in competitive employment those blind and otherwise disabled who can meet the standards and qualifications of private industry.	Three rehabilitation workshops which provide service to 250 clients.	Provide job training and employment to blind and otherwise disabled workers.	Active vocational rehabilitation case.	Some federal matching funds for training equipment.
Business Enterprise Program (BEP)	To promote, design, install and supervise vending stand and food service facilities to be operated by licensed blind persons.	A committee selects the blind operator for each location. Formal training is under direct supervision of the Department of Rehabilitation.	Licensing of vending and food service facilities; and training in business management, culinary skills, and other related skills.	Operators must be legally blind. Other disabled may be trained for helper jobs.	Full federal matching funds.

### **B. Eligibility**

Eligibility is based on the existence of a physical or mental disability, a substantial handicap to employment, and the reasonable expectation that vocational rehabilitation services may enable the individual to engage in a gainful occupation. If necessary in making a decision of probable outcome, rehabilitation services can be provided during a period of extended evaluation to determine the individual's ability to benefit from them.

Prior to the 1965 federal amendments to the Vocational Rehabilitation Act, certain rehabilitation services could be provided without regard to the individual's ability to pay for them and certain other services could be provided without cost to the individual only when he was unable to purchase them for himself. The 1965 law eliminates economic need as a prerequisite for any vocational service, but allows each state to apply an economic needs test for other than diagnostic and related services, counseling and placement.

### **C. Benefits**

Vocational rehabilitation services are provided to disabled persons, at or near the working age, where disability is a vocational handicap in that it interferes with obtaining or keeping employment. The essence of the program is mobilization of all the resources of the disabled individual, the community and the government to bring the disabled person to his optimum functioning level so that he may find suitable employment. The rehabilitation plan may include one or more of the following services:

1. Evaluation, including medical diagnosis to determine the nature and degree of disability and to evaluate work capacities.
2. Counseling and guidance toward a good vocational adjustment.
3. Medical, surgical, psychiatric and hospital care and related therapy as needed to complement the client's own resources available to him, such as public medical facilities or Medi-Cal, to reduce or remove the disability.
4. Training, either academic or vocational, including pre-vocational and personal adjustment centers.
5. Artificial limbs, braces, or other devices when needed to increase work ability.
6. Services in rehabilitation facilities, including sheltered workshops and adjustment centers.
7. Supplemental allowances and transportation when needed during rehabilitation.
8. Tools, equipment, and licenses required for training or in self-employment.
9. Other goods and services necessary to achieve employment.
10. Placement in suitable employment and follow-up to make certain that both employer and employee are satisfied.

The time it takes for rehabilitation services to be completed varies according to the needs of the individual. On the average, it requires about 20 months to complete the rehabilitation process. While the client is receiving services, the counselor continues to provide counseling and follow-up in order to anticipate and prevent any problems that may



develop and coordinate the services required. A disabled person is considered rehabilitated when he achieves suitable employment.

## V. Funding

From 1963 to 1965 all federal money available to California for rehabilitation purposes was matched dollar for dollar. However, while California received approximately 50 percent federal financing, other states with lower per capita incomes received as high as 70 percent.

In 1965, the amount of federal funds available to state agencies was increased by the establishment of a uniform matching ratio for all states. States had their funds matched at a rate of three federal dollars for each state dollar available. No state could receive more than its allocation under the formula and no state could reduce its state appropriation under the formula. Nor could a state reduce its appropriation because of the additional federal money available.

The 1968 federal amendments also revised the funding allotments. The funding is made to states on the basis of population and per capita income. A minimum of \$1 million has now been set apart to assist states with low population density and high per capita income to increase efficiency, expand rehabilitation services, and reach a greater number of clients. Effective in fiscal year 1970, the federal share is raised from 75 percent to 80 percent to support the basic program of rehabilitation services provided by the states.

## VI. Statistics

### A. Total Expenditures for Vocational Rehabilitation Programs

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	8,593	10,263	14,883	27,335	25,128
Vocational Guidance and Placement Programs.....	7,392	8,853	11,830	20,483	16,204
Cooperative Rehabilitation Programs.....			1,550	5,324	7,091
Special Rehabilitation Programs for the Blind.....	1,201	1,410	1,503	1,528	1,833
2. Total administrative expenditures.....	553	596	677	1,320	1,358
Vocational Guidance and Placement Programs.....	463	486	448	730	589
Cooperative Rehabilitation Programs.....			155	532	709
Special Rehabilitation Programs for the Blind.....	90	110	74	58	60
3. Total direct program costs.....	8,040	9,667	14,206	26,015	23,770
Vocational Guidance and Placement Programs.....	6,929	8,367	11,382	19,753	15,615
Cooperative Rehabilitation Programs.....			1,395	4,792	6,382
Special Rehabilitation Programs for the Blind.....	1,111	1,300	1,429	1,470	1,773
4. Total case service expenditures.....	3,063	4,487	6,763	12,811	12,836
Medical services.....	810	1,022	1,604	2,172	2,390
Maintenance/transportation.....	827	1,265	1,862	4,397	4,305
Placement/training.....	1,426	2,200	3,297	6,242	6,141

## B. Sources of Funds for Vocational Rehabilitation Programs

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	4,499	5,413	10,158	22,238	20,897
State.....	4,094	4,850	4,725	5,097	4,231
2. Total administrative expenditures					
Federal.....	285	313	488	1,123	1,207
State.....	268	283	189	197	151
3. Total direct program costs					
Federal.....	4,224	5,100	9,670	21,115	19,690
State.....	3,816	4,567	4,536	4,900	4,060
Case services					
Federal.....	1,927	1,734	4,597	11,506	10,062
State.....	3,050	3,446	2,846	1,698	872
Medical services					
Federal.....	607	767	1,203	1,629	1,793
State.....	203	255	401	543	597
Maintenance/transportation					
Federal.....	620	949	1,397	3,298	3,229
State.....	207	316	465	1,099	1,076
Placement/training					
Federal.....	1,070	1,650	2,473	4,682	4,606
State.....	356	550	824	1,560	1,535

## C. Client Count for Vocational Rehabilitation Programs

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total cases served during year					
Division of Vocational Rehabilitation.....	20,176	22,423	26,726	42,352	52,454
Cooperative programs.....			894	7,241	13,552
Legally blind.....	1,002	1,131	1,373	1,572	1,735
Visually impaired.....			646	932	1,617
2. Total cases closed from service					
Division of Vocational Rehabilitation.....	7,794	8,801	9,875	14,418	22,061
Cooperative programs.....			53	1,771	4,946
Legally blind.....	284	318	379	436	548
Visually impaired.....			241	325	730
3. Caseload, end of year					
Field rehabilitation services.....	498	646	655	664	686
4. Business enterprise program					
Total licensed operators.....	238	248	251	267	277
Handicapped employed other than blind.....	93	109	120	98	100
5. Total number of persons on payroll during year					
California Industries for the Blind.....	277	292	297	313	301
Opportunity Work Centers.....	111	117	108	100	102
6. Comparison of all client workload with welfare recipient workload					
Cases served during year					
All clients.....	51,174	57,995	67,741	100,922	122,934
Welfare recipients.....	n.a.	13,146	13,299	18,239	21,919
Cases closed during year					
All clients.....	32,829	34,588	37,404	48,380	68,145
Welfare recipients.....	8,444	8,367	7,567	8,491	13,230
Cases rehabilitated during year					
All clients.....	3,045	3,461	4,531	6,601	11,291
Welfare recipients.....	731	852	1,159	1,401	3,322

n.a. Not available.

## MATERNAL AND CHILD HEALTH

### I. General Description

The Maternal and Child Health (MCH) program includes services for and studies and investigations of maternal and child health problems. The objective of MCH is to assist children and their mothers in attaining the best measure of health possible. It is devoted to all health efforts which promote physical, mental, and social well-being and prevent ill health of mothers and children during the critical periods of gestation, growth, and development to adulthood.

### II. Program Background

Under the Sheppard-Towner (Maternity and Infancy) Act of 1921, both maternal and child care services in California were first provided.

The California Bureau of Child Hygiene was authorized in 1919 to investigate conditions affecting the health of children of the state and disseminate educational information and cooperate with the United States Children's Bureau in carrying out child services in California. The Bureau of Maternal and Child Health was established in June 1936, by the State of California to take advantage of federal grants offered under Part I, Title V of the Social Security Act enacted in 1935.

The Maternal and Child Health program formed only part of a network of permanent federal programs created in the 1930's for the protection of children. Maternal and child health was instituted to provide services promoting the health of mothers and children especially in rural areas and areas suffering from severe economic distress.

Under the matching formula of Title V of the Social Security Act, half of the federal grant was required to be matched dollar for dollar by the states (Fund A). There was no matching requirement for the remainder of the grant (Fund B). This basic formula has never changed. However, there were yearly increases in the amount of money granted. In fiscal 1935, \$3.8 million was granted to the states. It is projected that by fiscal 1970, \$50 million will be granted. The 1960 Social Security Act amendments permitted the Secretary of Health, Education, and Welfare to reserve 25 percent of Fund B for special research and demonstration projects.

Further state expansion of the program occurred in 1959 when diagnostic field clinics for mentally retarded infants and young children were initiated.

The Farm Workers Health Service was established by state legislation in 1961 to promote better health care for the state's seasonal farm laborers and their families. Expenditure of funds was authorized to promote health projects for seasonal agricultural workers and to support local projects. The coordinator and consultants are from the fields of medicine, nursing, sanitation, social work, health education and statistics.

In 1962, through Public Law 87-692, Congress provided funds which enabled the State Department of Public Health's Farm Worker Health Service unit to expand its staff and develop and coordinate a unified statewide program for migrant farm workers. Congress also amended

the Public Health Act to authorize grants for family clinics for domestic agricultural migratory workers and other purposes.

### **III. Federal Requirements**

In order to qualify for payments under the MCH program, the state is required to have a plan which :

1. Provides for financial participation by the state ;
2. Provides for the administration of the plan by a state health agency or the supervision of the administration of the plan by the state health agency ;
3. Maintains personnel standards on a merit basis and provides for training and effective use of paid subprofessional staff ;
4. Provides such reports as the Secretary of HEW may from time to time require ;
5. Provides for cooperation with medical, health, nursing, educational, and welfare groups and organizations ;
6. Provides for payment of the reasonable cost of inpatient hospital services provided under the plan ;
7. Provides, effective July 1, 1972, special project grants for maternity and infant care, for health of school and preschool children and for dental health of children ;
8. Provides for carrying out the purpose of enabling the state to extend and improve (especially in rural areas and in areas suffering from severe economic distress) the services for reducing infant mortality ;
9. Provides for the development of demonstration services (with special attention to dental care for children and family planning services for mothers) in needy areas and among groups in special need ;
10. Provides that optometric services must be provided by either a licensed optometrist or from a clinic or other appropriate institution ;
11. Provides that family planning services shall be voluntary on the part of the individual to whom such services are offered ;
12. Provides that the Chief of the Bureau of Maternal and Child Health be a doctor of medicine.

No state is required to compel any person to undergo any medical screening, examination, diagnosis or treatment or to accept any other health care or services provided, if such person objects (or in the case of a minor, if his parent or guardian objects) due to their religious beliefs.

### **IV. State Requirements**

#### **A. Organization and Administration**

California's Bureau of Maternal and Child Health is a part of the Preventive Medical Program of the State Department of Public Health.

In carrying out the responsibility of the program, the department is assisted by the following advisory committees, which are composed of representatives of medical specialty groups, voluntary agencies, the California Conference of Local Health Officers, other agencies and interested members of the general public :



1. Maternal and Child Health Advisory Committee.
2. Seasonal Agricultural Workers Advisory Committee.
3. California Indian Health Advisory Committee.
4. Advisory Committee on School Audiometry.
5. Metabolic Screening Advisory Committee.

Subcommittees and ad hoc committees on special problems are appointed by the Director, State Department of Public Health.

Maternal and child health services are provided directly by county health agencies and related public and private agencies through subventions, allotments, and special project allowances administered by the State Department of Public Health. The basic administrative procedures are established by state law, rules, or regulation and are followed in all counties. Supervision of local agency programs is provided by administrative and field staff of the Bureau of Maternal and Child Health. Periodic reports are required to be filed by local agencies to the State Department of Public Health. An audit of local programs is performed by the audit unit of the department. The bureau staff clarifies and interprets state policies and procedures for the counties.

The Bureau of Maternal and Child Health cooperates with Neighborhood Youth Corps in accepting trainees, and supervises the work of these trainees to provide work experience.<sup>1</sup> The community health aide classification has been established for local health departments and other agencies to employ subprofessional staff to assist in extending maternal and child health services more widely in local communities. The community health aides are usually persons of low income, employed on a full or part-time basis.

Activities in other units of the Department of Public Health, such as Crippled Children Services, Mental Retardation, Nursing, Nutrition, and Social Work, which are concerned with the Maternal and Child Health program, are jointly planned and coordinated with bureau staff under general direction of the Chief of the Preventive Medical Program. The Bureau of Maternal and Child Health receives, reviews, and makes recommendations regarding new programs planned in other departmental units related to the Maternal and Child Health Program.

The bureau also cooperates with the State Department of Education, the University of California School of Public Health, the California Medical Association and other bureaus and agencies in special projects and studies on maternal and child health. An example of a combined study would be the Intrauterine Contraceptive Device Study with the U.S. Department of Health, Education and Welfare.

The Bureau of Maternal and Child Health conducts special projects in the areas of mental retardation, diseases of infants and mothers, and training of personnel.

## **B. Eligibility**

The Maternal and Child Health programs, their objectives, services, and eligibility requirements are presented in the following table.

<sup>1</sup> See *Economic Opportunity Act Programs*, Title I, Neighborhood Youth Corps.



## OBJECTIVES AND SERVICES OF MATERNAL AND CHILD HEALTH PROGRAMS

PROGRAM	OBJECTIVES	SERVICES	ELIGIBLE
Infant Health	<ol style="list-style-type: none"> <li>1. To promote the optimal health of infants through the early identification; treatment and correction of health deficits;</li> <li>2. The prevention of disease in early life through effective surveillance;</li> <li>3. The development of new, more effective methods for providing health care to all segments of the population;</li> <li>4. The development of reasonable standards for, and assistance to, local health agencies in the development and application of comprehensive health care services.</li> </ol>	<b>Bureau of Maternal and Child Health</b> <ol style="list-style-type: none"> <li>1. Development of new, more effective methods for providing health care;</li> <li>2. Development of standards;</li> <li>3. Assistance to local health agencies in the development and application of comprehensive health care services for mothers and children;</li> <li>4. Study of Hyaline Membrane Disease;</li> <li>5. Study of Hemolytic Disease;</li> <li>6. Study of congenital malformations;</li> <li>7. Study of use of oxygen on premature babies;</li> <li>8. Surveillance and investigation of Gonococcal Conjunctivitis;</li> <li>9. Study on prevention, diagnosis, and referral of phenylketonurias (PKU);</li> </ol> <b>Local Health Agencies</b> <ol style="list-style-type: none"> <li>1. Administers allotments for infants to receive health care services.</li> </ol>	Birth to one year of age.
Comprehensive Infant Care	<ol style="list-style-type: none"> <li>1. To determine ways in which more babies and their mothers can obtain proper prenatal care;</li> <li>2. To provide comprehensive health services for mothers and infants in areas of high risk;</li> <li>3. To develop more effective ways of using health manpower to meet needs of this group.</li> </ol>	<b>Bureau of Maternal and Child Health</b> <ol style="list-style-type: none"> <li>1. Support to local health agencies and other organizations in infant health;</li> <li>2. Utilize better specific professional skills of physicians and nurses;</li> </ol> <b>Local Health Agencies</b> <ol style="list-style-type: none"> <li>1. Provide services through child development clinics, and state-approved maternity and infant care projects.</li> </ol>	Infants and mothers.
Child Health	<ol style="list-style-type: none"> <li>1. To promote the optimal health of children from age one to early adulthood through the continuation of programs of early identification, treatment and correction of health deficits;</li> <li>2. The prevention of disease and disability resulting from environmental and other hazards such as automobile accidents and injuries in a more active population;</li> <li>3. To develop new and more effective responses to the growing health problems of drug abuse, teenage pregnancy, and venereal disease;</li> <li>4. To support local health programs to improve the delivery of health care services to children;</li> <li>5. To support local health programs for the prevention of mental retardation in children.</li> </ol>	<b>Bureau of Maternal and Child Health</b> <ol style="list-style-type: none"> <li>1. Comprehensive health programs for children and youth in San Francisco, Los Angeles, and Oakland;</li> <li>2. School health services study;</li> <li>3. Hearing and vision screening in preschool child health;</li> <li>4. Development of standards for medical care components of federal and state funded preschool educational programs, including compulsory education programs;</li> <li>5. Development of programs for the care of pregnant unmarried teenagers;</li> <li>6. Support to local health agencies;</li> </ol> <b>Local Health Agencies</b> <ol style="list-style-type: none"> <li>1. Child health conferences, pediatric services and immunization;</li> <li>2. Services to handicapped and emotionally disturbed children;</li> <li>3. Health education counseling; adolescents and general;</li> <li>4. Dental care.</li> </ol>	Preschool, school age, and adolescent.

<b>Maternal Health</b>	<ol style="list-style-type: none"> <li>1. To promote the optimal health of women as they pass through their childbearing years by encouraging the application of the most effective and comprehensive health care services possible for the avoidance of illness and death due to childbearing and other causes;</li> <li>2. To assist in the development and application of new and more effective methods of safeguarding the health of women who wish to obtain the assistance they want in planning and spacing their families.</li> </ol>	<p><b>Bureau of Maternal and Child Health</b></p> <ol style="list-style-type: none"> <li>1. Maternal death surveillance study;</li> <li>2. Family planning, including:               <ol style="list-style-type: none"> <li>a. promoting new and more effective family planning services in California;</li> <li>b. providing consultation and other support to a long-range study at the University of California in the safety and effectiveness of the intrauterine contraceptive device (IUCD);</li> </ol> </li> </ol> <p><b>Local Health Agencies</b></p> <ol style="list-style-type: none"> <li>1. Comprehensive maternity and infant care services in Los Angeles, San Francisco, and Berkeley;</li> <li>2. Prenatal and postnatal services;</li> <li>3. Parent and expectant parent education.</li> </ol>	<b>Mothers.</b>
<b>Farm Workers Program*</b>	<ol style="list-style-type: none"> <li>1. To study the health and health services for seasonal and agricultural and migratory workers and their families throughout the state;</li> <li>2. To give technical and financial assistance to local agencies concerned with the health of seasonal agricultural and migratory workers and their families throughout the state;</li> <li>3. To coordinate with similar programs of the federal government and with other state and voluntary non-profit organizations, in connection with the health and welfare of seasonal and migratory agriculture workers and their families.</li> </ol>	<p><b>Bureau of Maternal and Child Health</b></p> <ol style="list-style-type: none"> <li>1. Supports services to 20 local migrant health projects which provide a variety of direct health services, and 12 projects which conduct one or more medical clinics through which comprehensive health services are provided;</li> <li>2. Supports maternity service clinics;</li> <li>3. Integrates nutritional programs with medical care programs;</li> <li>4. Identifies the sanitation and environmental health needs of communities where agricultural migrants may be found, and supports these services.</li> </ol>	Seasonal agricultural and migratory workers and their families.

\* Other services provided by other public and private agencies: see also *Economic Opportunity Act Programs and California Medical Assistance Program*.

## V. Funding

Each state's federal Maternal and Child Health grant is determined by the number of its live births in relation to the total number of live births in the nation, by the state's financial need for help in providing services and by its proportion of rural births.

All grants under the Title V programs are channeled to the states under the following plan:

1. Half of the federal appropriation is required to be matched dollar for dollar by the states (Fund A).
2. The other half of the federal appropriation (Fund B) is given to the states only at such times as additional funds are needed to carry out the state's plan. Not more than 25 percent of Fund B is reserved for special research and demonstration projects.

The federal funds are applied in the following ways:

1. Federal funds allocated to the state are used to reimburse a per capita subsidy to counties and cities containing full-time health jurisdictions.
2. An allotment is made available to local full-time health jurisdictions which submit a plan which is approved on the basis of feasibility and meet state and federal requirements.
3. A specified amount is also awarded for special projects in mental retardation in MCH programs. The local health departments submit plans which are judged on appropriateness and feasibility of plan and relation to the state MCH priorities.
4. A portion of the state's Children's Bureau allocation is made available to local health jurisdictions and other local agencies with a maternal and child health orientation for the purpose of supporting demonstration and pilot projects directed at introducing new MCH services, improving existing MCH programs, and making available larger sums of money from other funding sources.

## VI. Statistics

### A. Program Expenditures for Maternal and Child Health Services

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	8,829	7,543	8,747	10,629	*13,354
2. Administrative expenditures.....	178	27	30	98	101
3. Direct program costs.....	8,651	7,516	8,717	10,531	13,253
Medical services.....	8,651	7,516	8,717	10,531	13,253

\* Includes Migrant Program expenditures of \$17,280 for administration (federal funds), \$535,818 for state programs (\$460,818—federal funds, \$75,000—state funds) and \$481,724 for local assistance (federal funds).

**B. Sources of Funds for Maternal and Child Health Services**

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	1,199	1,459	1,901	1,766	3,408
State.....	333	64	94	128	130
Local.....	7,297	6,020	6,752	8,735	9,816
2. Administrative expenditures					
Federal.....	18	19	26	84	85
State.....	160	8	4	14	16
3. Direct program costs					
Federal.....	1,181	1,440	1,875	1,682	3,323
State.....	173	56	90	114	114
Local.....	7,297	6,020	6,752	8,735	9,816

**C. Services Provided by Type by Maternal and Child Health Programs**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Clinic services					
Antepartum clinic services.....	n.a.	*16,306	23,607	23,436	21,879
Postpartum clinic services.....	n.a.	*3,252	794	1,736	1,051
Family planning services.....	n.a.			28,379	37,922
2. Services to expectant parents					
Enrolled in course.....	n.a.	*6,394	1,471	1,092	718
Receiving PHN visits.....	n.a.		n.a.	27,306	28,871
3. Child health conference services					
PHN visits for children	n.a.	*99,113	81,516	88,394	109,775
Under 1 year	n.a.	*131,875	126,658	55,480	56,706
1 to 4 years.....	n.a.	*125,231	128,230	44,569	46,142
5 to 19 years.....	n.a.	*14,664	13,977	42,480	32,195
4. School health services					
Examined by physician.....	n.a.		26,477	29,476	16,254
Examined for					
Vision.....	n.a.		194,908	182,814	88,585
Hearing.....	n.a.		194,087	190,868	144,374
Dental defects.....	n.a.		22,275	28,039	44,194
Other conditions.....	n.a.		5,537	75,867	2,846
5. Public health nursing services					
Mothers					
Antepartum.....	n.a.	*36,507	41,659	n.a.	n.a.
Postpartum.....	n.a.	*46,259	49,547	29,717	27,037
Preschool children					
Under 1 year					
Number.....	n.a.	*73,468	59,636	n.a.	n.a.
Visits.....	n.a.	*154,677	171,053	n.a.	n.a.
1 to 4 years					
Number.....	n.a.	*49,991	42,055	n.a.	n.a.
Visits.....	n.a.	*126,827	138,050	n.a.	n.a.
School children 5-19 years					
Number.....	n.a.	*47,936	38,283	n.a.	n.a.
Visits.....	n.a.	*105,141	117,331	n.a.	n.a.
6. Immunizations provided for (under age 20)					
Smallpox.....	n.a.	*606,095	145,475	220,074	150,053
Polio myelitis (oral).....	n.a.	*236,580	221,148	316,777	293,489
Measles.....	n.a.	n.a.	157,500	244,958	369,040
Diphtheria.....	n.a.	*158,935	429,008	768,647	394,046
Pertussis.....	n.a.	*211,427	251,731	309,457	229,243
Tetanus.....	n.a.	*156,826	430,052	773,916	397,213

\* Calendar year 1964.

n.a. Not available.

## CRIPPLED CHILDREN SERVICES

### I. General Description

"Crippled Children Services (CCS) is a program of physical habilitation or rehabilitation for children with specified handicapping conditions. These are children in need of specialized care whose families are unable, wholly or partially, to pay for these services on a private basis. The program goal is to obtain for handicapped children the medical and allied services necessary to achieve maximum physical and social function."<sup>1</sup>

Under the program a handicapped child is defined as "a physically defective or handicapped person under the age of 21 years who is in need of services."<sup>2</sup>

### II. Program Background

The Crippled Children Services program was established under provisions enacted by the California Legislature in 1927. The first project, initiated in October 1927, was a program for children with poliomyelitis. The original provisions of the Crippled Children Services program called for services for the needy, physically defective or handicapped persons under 18 years of age and residents of California who should have necessary medical care and treatment. The services were only for those children whose parents could not pay for all or part of their treatment.

The state program for crippled children was revised to comply with the provisions of the Social Security Act enacted in 1935. As a result of these federal requirements, the state raised its age limit for eligibility from 18 to 21 years of age. By June 1936, the State of California was receiving federal grants for the Crippled Children Services program. Under the matching formula of Title V of the Social Security Act, half of the federal grant (Fund A) was required to be matched dollar for dollar by the states. There was no matching requirement for the remainder of the grant (Fund B). This basic formula has never changed (see *Funding*). An amendment to the Social Security Act in 1960 reserved 25 percent of Fund B for special research and demonstration projects.

The Crippled Children Services program created the provision for medical therapy services in the schools for crippled children with cerebral palsy in 1945. The program was modified in 1961 to include all physically handicapped children. This program represents the combined efforts of the State Departments of Public Health, Education and Mental Hygiene.

### III. Federal Requirements

In order to qualify for payments under the Crippled Children Services program, the state is required to have a plan which:

1. Provides for financial participation by the state;
2. Provides for the administration or supervision of the plan by a state health agency;

<sup>1</sup> State of California Department of Public Health, *Crippled Children Services Program* (Sacramento: California Office of State Printing, 1964), p. 5.

<sup>2</sup> *Op. Cit.*, p. 7.



3. Maintains personnel standards on a merit basis and provides for training and effective use of paid subprofessional staff;
4. Provides such reports as the Secretary of HEW may from time to time require;
5. Provides for cooperation with medical, health, nursing, educational, and welfare groups and organizations, and with any agency in the state charged with administering state laws providing for vocational rehabilitation of physically handicapped children;
6. Provides for early identification of children in need of health care and for treatment services needed to correct or ameliorate defects or chronic conditions;
7. Provides for payment of the reasonable cost of inpatient hospital services provided under the plan;
8. Provides, effective July 1, 1972, projects, particularly in low income family areas, to reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with childbearing and to reduce infant and maternal mortality;
9. Provides that optometric services must be provided by either a licensed optometrist or from a clinic or other appropriate institution;
10. Provides that diagnostic services be provided without regard to residence or economic status.

No state is required to compel any person to undergo any medical screening, examination, diagnosis or treatment or to accept any other health care or services provided, if such person objects (or in the case of a minor, if his parent or guardian objects) due to their religious beliefs.

#### **IV. State Implementation**

##### **A. Organization and Administration**

The program of Crippled Children Services is administered by the State Department of Public Health. Medical conditions included in the program are established by regulation as determined by the State Board of Health. However, as a result of legislation enacted during the 1968 session (AB 2025, Chapter 1316), effective July 1, 1969, the determination of eligible medical conditions will be made by the Director of Public Health.

A pattern of direct county administration has been widely adopted. The program may be administered locally by the county health department or the welfare department in accordance with the decision of each county board of supervisors. Through local county administration the program is able to provide a more efficient and personalized service to children. Those counties which directly administer their own Crippled Children Services program are designated as "independent" counties and have fairly large caseloads and facilities for the care of crippled children available either in or near the county. In independent counties, planning for care and authorization of services, direct payment of bills, and other related activities are the function of the local Crippled Children Services agency.

The remaining counties share the administration of their programs with district offices of the State Bureau of Crippled Children Services and are designated as "dependent" counties. These counties generally do not have the staff nor the facilities available locally to conduct a program in direct cooperation with the State Department of Public Health. In dependent counties, the local agencies retain responsibility for case finding, for determination of economic eligibility, referral to the program and follow up. The State Department of Public Health makes necessary assignments to the nearest available facilities, issues authorizations, and checks and processes payment of bills using county and state funds according to an agreed allocation.

The local agency responsible for administering the program is required to determine:

1. That the handicapping condition is medically eligible for care under the program;
2. That the child is a resident of the county in which the application is filed;
3. That the parents or estate of the child is, either wholly or in part, unable to pay for the cost of medical care.

The State Department of Public Health and the locally administered county Crippled Children Services programs provide non-institutional medical care services. The State Department of Education and the local school districts provide the educational components. The State Department of Mental Hygiene provides institutional care for the mentally retarded cerebral palsied children including educational and medical care services for such children.

The Bureau of Crippled Children Services supports periodic medical clinics in the special schools for physically handicapped children for the purpose of providing medical diagnoses, case management, and consultation for the physical and occupational therapy programs in the schools. All therapists are employed by the counties, financed by contract with the Bureau of Crippled Children Services.

## **B. Eligibility**

### **1. Medical Eligibility Requirements**

To be eligible for benefits under Crippled Children Services, a person must be under 21 years of age and have physical defects resulting from congenital anomalies or have physical defects acquired through disease, accident, or faulty development. Conditions generally covered by the program include:

- (1) Defects of an orthopedic nature, due to infection, injury, or congenital malformation;
- (2) Defects requiring plastic reconstruction;
- (3) Defects requiring orthodontic reconstruction;
- (4) Eye conditions leading to a loss of vision;
- (5) Ear conditions leading to a loss of hearing;
- (6) Rheumatic or congenital heart disease;
- (7) Other specified conditions such as nephrosis, phenylketonuria; cystic fibrosis; disfiguring deformities such as extrophy of the bladder, severe hemangiona, etc.

The guiding principle is to accept for services those children who have handicapping conditions which recommended treatment will arrest or correct. These children are referred to one of the participating physicians; the physician establishes the diagnosis; and the program criteria are used to determine if the diagnosis renders the child medically eligible.

## **2. Financial Eligibility Requirements**

Financial eligibility is determined :

- (1) For treatment services only;
- (2) By the county of residence (since July 1, 1968, standards for measuring financial eligibility are established by the state);
- (3) On the basis of the estimated total cost of all treatment services to be provided for the eligible medical condition and the family's ability to pay for all these services.

To the extent that they are financially able, families are expected to reimburse the Crippled Children Services program for treatment services rendered.

## **3. Residence Requirements**

State law requires that, for authorization of treatment services, the family must demonstrate its intent to reside in California. The county of residence is ordinarily determined by the residence of the child's father or legal guardian.

## **C. Benefits**

Services are related to the child's medical needs and include:

1. Diagnosis—all necessary diagnostic aids requested by the child's physician;
2. Hospital care;
3. Surgical care;
4. Necessary appliances;
5. Physical or occupational therapy (upon medical recommendation and under medical supervision).

Transportation is provided by ambulance if medically indicated. Maintenance may be provided in a foster home if essential in order to keep the rural child near a medical center for treatment.

## **V. Funding**

Each state's grant for Crippled Children Services is affected by the number of children under 21 years of age, the financial need of each state for help in carrying out its program, and its relative number of rural children.

All federal funds under the Title V programs are channeled to the states under the following plan:

1. Half of the federal grant is required to be matched dollar for dollar by the state (Fund A);
2. The other half of the federal grant (Fund B) is given to the states as additional funds to carry out the state's plans. Not more than twenty-five percent of Fund B is reserved for special research and demonstration projects.

The Crippled Children Services program is financed through funds derived from federal, state, and county taxes and is further supplemented by reimbursements made to the programs from families whose children have received care under Crippled Children Services auspices.

The state pays two-thirds of the treatment costs and all of the costs of diagnosis and salaries of therapists serving public school programs for physically handicapped children. The county pays one-third of the cost of treatment services; and, in addition, provides the services of public health nurses and/or social workers. Effective July 1, 1969, the county will pay one-fourth of the cost of all services, *i.e.*, diagnosis, treatment and the salaries of the therapists; and the state will pay the remaining three-fourths.

Under a complicated formula, the state also reimburses counties for a portion of county administrative costs.

Federal funds contribute approximately 10 percent of the total medical care costs.

Any child certified under the California Medical Assistance Program (Medi-Cal) who has a condition covered by the Crippled Children Services program must be referred to the county Crippled Children Services. Services provided these children are funded under Medi-Cal.

## VI. Statistics

### A. Program Expenditures for Crippled Children Services

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	14,123	15,814	18,183	18,932	18,985
2. Administrative expenditures.....	1,236	1,569	1,679	1,853	1,847
State.....	n.a.	432	448	478	535
County.....	n.a.	n.a.	n.a.	n.a.	n.a.
Unidentifiable expenditures.....	1,236	1,137	1,231	1,375	1,312
3. Direct program costs.....	12,887	14,245	16,504	17,079	17,138
Medical services*.....	12,887	14,245	16,504	17,079	17,138

\* Does not include family repay expenditures.

n.a. Not available.



**B. Sources of Funds for Crippled Children Services**

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	1,074	1,289	1,841	2,376	2,100
State.....	9,337	10,415	11,636	11,557	11,962
County.....	3,712	4,080	4,706	4,999	4,923
2. Administrative expenditures					
Federal.....	638	914	914	987	972
State.....	598	655	765	866	875
3. Direct program costs					
Federal.....	436	375	927	1,389	1,128
State.....	8,739	9,790	10,871	10,691	11,087
County.....	3,712	4,080	4,706	4,999	4,923

**C. Case Count for Crippled Children Services**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Cases served during year.....	55,250	55,981	60,260	56,411	n.a.

n.a. Not available.

**SCHOOL LUNCH PROGRAM****I. General Description**

The purpose of the School Lunch Program is to safeguard the health and well-being of children; encourage domestic consumption of nutritious agricultural commodities and other food through grants-in-aid and other means; and provide an adequate supply of foods and facilities for the establishment, maintenance, operation, and expansion of non-profit school lunch programs.

**II. Program Background**

Federal aid to school lunch programs began in 1936 when the Department of Agriculture started to donate foods acquired under surplus-removal operations under Section 32 of P.L. 74-320 (1935) to schools for use in lunch programs. Section 32 marked 30 percent of all U.S. customs receipts from all sources each year for the Secretary of Agriculture, to be spent on three purposes: (1) encouragement of exports; (2) encouragement of domestic consumption; and (3) re-establishment of farmer's purchasing power. This language was so broad that Section 32 became a catchall authority, used at various times to finance export subsidies; to conduct agricultural research; to carry out a food stamp plan; and to purchase foods on the market and donate them to the school lunch programs, the needy, and welfare institutions.

From 1943 to 1946, the Department of Agriculture carried on a new type of aid under which Section 32 funds were used to make cash grants to the schools to help them make local purchases of food for lunch programs.



The program was put on a new basis with passage of the National School Lunch Act of 1946 (HR 3370—PL 79-396), which authorized regular federal appropriations for cash grants to the states for non-profit school lunch programs in public and private schools. Part of the funds available could be used by the Department of Agriculture for purchase and donation of commodities to lunch programs, but at least 75 percent was reserved for cash grants to the states for local purchase of foods. State and local sources were required to match the federal funds on a rising scale which by the mid-1950's provided \$3 of state money for each \$1 of federal money. The amendments also assured that in states with segregated schools, Negro schools would receive a fair share of the lunch program funds.

School Lunch Act cash grants from 1947 to 1949 were financed by transfer of Section 32 funds, but thereafter direct appropriations were made (in some cases supplemented by Section 32 transfers).

Legislation passed in 1962 (PL 87-823) made several changes in the National School Lunch Act:

1. A new apportionment formula was to be installed over several years which based apportionment of funds to each state in any year on state need and the number of children participating in the lunch program the previous year, instead of the state's need and school-age population;
2. A special authorization was provided for extra aid to very poor areas;
3. Since segregated schools were no longer legal, the equal-treatment guarantee for segregated schools was eliminated from the act.

### **III. Federal Requirements**

Under the regulations of the National School Lunch Act, a school is selected for participation in the cash-for-food assistance phase of the School Lunch Program on the basis of need and attendance. A school cannot be eligible for participation if it operates a food or milk service in any attendance unit under a contractual arrangement with a concessionaire or food service management company under a similar arrangement, even though the school or such attendance unit obtains no profit from the operation of such food or milk service.

In 1965, the Special Assistance Program was added to the National School Lunch Act. Its purpose is to provide special assistance to schools drawing attendance from areas in which poor economic conditions exist to help such schools meet the requirements of the National School Lunch Act concerning the serving of lunches to children unable to pay full cost of such lunches.

Schools are selected to participate in the School Lunch Program on the basis of the following factors:

1. The economic condition of the area from which such schools draw attendance;
2. The needs of the pupils in such schools for free and reduced price lunches;
3. The percentage of free and reduced price lunches being served in such schools;

4. The prevailing price of lunches in such schools as compared with the average prevailing price of lunches served in the state under the National School Lunch Act;
5. The need of such schools for additional assistance as reflected by the financial position of the School Lunch Program in such schools.

Schools selected for participation enter into a written agreement with the state agency or, in those states in which the Food Distribution Division administers the program in private schools, private schools shall enter into an agreement with the Department of Agriculture. Under the agreement, the school shall:

1. Operate a nonprofit lunch program which provides that:
  - a. Income accruing to the lunch program of any school shall be used only for program purposes;
  - b. Funds from sources other than federal or children's payments for lunches shall be used to finance out-of-state travel of school lunch personnel or the purchase of automotive equipment;
2. Limit its operating balance to a level consistent with program needs;
3. Serve lunches which meet the minimum requirements prescribed during a period designated as the lunch period by the school;
4. Price the Type A lunch as a unit;
5. Supply lunches without cost or at reduced price to all children who are determined by local school authorities to be unable to pay the full price of the lunch;
6. Make no discrimination against any child because of his inability to pay the full price of the lunch;
7. Claim reimbursement only for the type or types of lunches specified in the agreement;
8. Submit claims for reimbursement in accordance with procedures established by the state agency or, where applicable, the Food Distribution Division;
9. Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable state and local laws and regulations;
10. Purchase, in as large quantities as may be efficiently utilized in its lunch program, foods designated as plentiful by the state agency or, where applicable, the Food Distribution Division;
11. Accept and use, in large quantities as may be efficiently utilized in its lunch program, such foods as may be offered as a donation by the Department of Agriculture;
12. Maintain necessary facilities for storing, preparing and serving food;
13. Maintain full and accurate records of its lunch program;
14. Upon request, make all accounts and records pertaining to its lunch program available to the state agency and to the Agricultural Marketing Service for audit or administrative review at a reasonable time and place.

The state is required to have its state agency in charge of the School Lunch Program review the programs of at least one-third of the state's participating schools each year.

In 1968, legislation was passed which made important changes in the program. Coverage of the National School Lunch Act was extended to nonprofit institutions. Funds were provided for equipment, and participating school districts were required to have written and publicly-announced, broad policies regarding the furnishing of free and reduced-priced meals and prohibited from identifying by means such as special tickets or tokens or by announced lists of names those children receiving free lunches.

#### **IV. State Implementation**

##### **A. Organization and Administration**

Under the National School Lunch Program Act, each state is required to provide a state agency whose job it is to provide adequate personnel for program supervision, including instructional and advisory services to the schools, and other supervisory assistance to assure adequacy of program operations. The Food Service Office of the Public School Administration in the Department of Education is the state agency designated to administer the program. In providing the required services, the Food Service Office processes and approves claims for reimbursement under the School Lunch Program. A field staff of eight professional people reviews local programs to determine that nutritional requirements are maintained. The staff also provides consultant services in the various areas of food service management (including meal planning), use and care of equipment, sanitation, and work simplification.

The purpose of the Food Service Office is to:

1. Assist participating school districts in operating their food service programs as efficiently as possible;
2. Select districts for participation in the Special Assistance Program (Section 11 of the National School Lunch Act), to allocate funds, and to process claims for reimbursement;
3. Assist participating school districts in extending the benefits of the National School Lunch Program to preschool children;
4. Develop and coordinate a statewide in-service training program for school food service personnel conducted at the junior college level;
5. Work with participating school districts in making the National School Lunch Program a functional program of nutritional education;
6. Provide leadership on a statewide basis in areas of school food service administration, management, and operation.

Sources for financing the cost of free and reduced priced lunches are:

1. The general fund of the district from taxes over and above the maximum elsewhere specified in the Education Code;
2. Volunteer organizations which often contribute funds for furnishing free meals to needy pupils;
3. Title I of the Elementary and Secondary Education (Compensatory Education) Act of 1965 which is designed to encour-

age and support the establishment and improvement of special needs of educationally deprived children of low income families (under certain circumstances funds made available under Title I may be approved for providing free meals for needy pupils);

4. Title II of the Economic Opportunity Act of 1965 for community action programs.

Under the broad definitions of these programs, free and reduced price meals for needy children can be provided.

### **B. Eligibility**

The Food Service Office has general rules and policies for participating school districts. These are:

1. All pupils who are determined by school district authorities to be in need of free or reduced price meals shall be furnished them;
2. There shall be no discrimination in the furnishing of free or reduced price meals because of race, religion, source of family income, or for any other reason;
3. Every attempt shall be made not to discriminate between those who are provided free or reduced price meals and others;
4. Whenever possible and practicable, needy pupils shall be provided an opportunity to earn their meals; however, assignments shall be appropriate for the age and sex of each child and shall not exceed one-half hour each day, and in no event shall a child be required to work *as a condition* of receiving free meals;
5. All forms of grants-in-aid shall be kept as a matter of record and subject to audit;
6. In determining the relative needs of pupils to receive free or reduced price meals, consideration shall be given to:
  - a. The importance of meeting family emergency situations such as sudden unemployment, illness, death, desertion, etc.,
  - b. The importance of an objective standard of determining family need,
  - c. The importance of giving priority to the neediest families regardless of source of income,
7. The lunches may be served to children who attend classes from pre-school to twelfth grades.

### **C. Benefits**

The benefits of this program are the provision of free or reduced cost lunches to school children. These lunches help to provide part of the nutritional daily requirements for the child.

The child is not obligated to pay for the lunches at a future date.

School lunches served in school districts participating in the National School Lunch Act program are required to consist of the following portions:

1. One-half pint of fluid whole milk as a beverage;
2. Two ounces (edible portion as served) of lean meat, poultry, or fish; or two ounces of cheese; or one egg; or one-half cup of dried beans or peas; or four tablespoons of peanut butter; or an equivalent quantity of any combination of any of the above



listed foods (to be counted in meeting this requirement, these foods must be served in a main dish or in a main dish and one other menu item) ;

3. A three-fourths cup serving consisting of two or more vegetables or fruits; or both (full strength vegetable or fruit juice may be counted to meet not more than one-fourth cup of this requirement) ;
4. One slice of whole grain or enriched bread ; or a serving of corn-bread, biscuits, rolls, muffins, etc., made of whole grain or enriched meal or flour ;
5. Two teaspoons of butter or fortified margarine.

The Food Distribution Division may, where applicable, allow schools to serve to children in the elementary grades lesser quantities of items two, three, and five than are specified above.

## V. Funding

Federal funds, available for general cash-for-food assistance are apportioned to a state by multiplying the participation rate of the state by the assistance need rate for the state. The product is then divided by the sum of the indices for all states. This figure is applied to the total amount of funds to be apportioned.

The individual school districts file with the Department of Education, Food Service Office, the total number of lunches they serve. Reimbursement is based on the number of lunches served.

The following table shows 1) the percentage of free, reduced-price lunches of the total amount of lunches served, and 2) the reimbursement rate per lunch.

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
Percent of free or reduced-price lunches.....	4.27	4.17	4.37	6.17	7.57
Reimbursement rate per lunch.....	5¢	4.5¢	4 + ¢	4 + ¢	4¢



**VI. Statistics****A. Total Expenditures for School Lunch Program—Free and Reduced Cost Lunches Portion**

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	2,366	3,792	2,947	3,266	3,010
2. Total administrative expenditures.....	192	196	214	218	231
State administration.....	192	196	214	218	231
Local administration*.....	n.a.	n.a.	n.a.	n.a.	n.a.
3. Total assistance expenditures.....	2,174	3,596	2,733	3,048	3,679

\* Local administrative expenditures are included in program costs.  
n.a. Not available.

**B. Sources of Funds for School Lunch Program—Free and Reduced Cost Portion**

(in thousands of dollars)

	Fiscal years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	277	258	251	348	428
State.....	192	196	214	218	231
County/local.....	1,897	3,338	2,482	2,700	3,251
2. Total administrative expenditures					
Federal.....					
State.....	192	196	214	218	231
County/local*.....	n.a.	n.a.	n.a.	n.a.	n.a.
3. Assistance expenditures					
Federal.....	277	258	251	348	428
State.....					
Local.....	1,897	3,338	2,482	2,700	3,251

\* Local administrative expenditures are included in program costs.  
n.a. Not available.

**C. Count of Free and Reduced Cost Lunches**

	Fiscal years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total school lunches.....	131,608,401	139,892,754	146,659,800	139,301,970	139,750,102
2. Total free and reduced cost school lunches..	5,549,346	5,732,667	6,264,976	8,710,985	10,696,543
3. Percent of free and reduced cost school lunches of total school lunches.....	4.2	4.1	4.3	6.1	7.5

## **SURPLUS FOOD PROGRAM**

### **(Commodity Distribution Program)**

#### **I. General Description**

The purpose of the Surplus Food Program is:

“ . . . to prevent the waste of commodities whether in private stocks or acquired through price support operations by the Commodity Credit Corporation before they can be disposed of in normal domestic channels . . . ”<sup>1</sup>

“Funds appropriated by said section (32 PL 320) may be used for the purchase . . . of agricultural commodities and products thereof, and such commodities . . . may be donated for relief purposes and for use in nonprofit summer camps for children.”<sup>2</sup>

#### **II. Program Background**

The Agricultural Acts of 1935 and 1949 and the National School Lunch Act of 1946 provide the legal basis for the U.S. Department of Agriculture to purchase and distribute surplus agricultural commodities and products to participating agencies. Section 32 and Section 416 of the Agricultural Act are the principal sections affecting the purchase and distribution of surplus food to the needy. Section 416 was the major basic authority for donations of commodities previously acquired by the Commodity Credit Corporation under price support operations. Subsequent amendments to both of these sections spelled out more clearly purchases of food for relief purposes and extended its donation to a wide variety of charities and welfare programs.

The following types of organizations are eligible to receive surplus commodities by complying with requirements of the U.S. Department of Agriculture and/or, in California, the State Department of Education:

1. Public and nonprofit private schools of high school grade or under, operating nonprofit school lunch programs serving complete meals;
2. Nonpenal, public and private charitable institutions which are tax-exempt and nonprofit are eligible to the extent of the number of needy persons unable to pay the full charge for services provided to them;
3. Public welfare agencies serving or assisting persons or families in need;
4. Taxexempt, nonprofit summer camps operated for the benefit of children of high school age and under;
5. Organizations providing emergency or disaster relief if authorized by the Area Office of the United States Department of Agriculture;
6. Organizations or agencies, public or private, engaged in bona fide experimental, testing or demonstration work for the sole benefit of the eligible groups listed above, if prior written approval has been received from the Food Service Office (Surplus Property Agency) of the State Department of Education.

<sup>1</sup> Section 416 of the Agricultural Act of 1949.

<sup>2</sup> Section 32, PL 165, 75th Congress as amended, which supplemented Section 32, (PL 320, 74th Congress).

*This report deals only with that segment of the program which supplies surplus food to welfare agencies.*

### III. Federal Requirements

The Consumer and Marketing Service (Consumer Food Programs), U.S. Department of Agriculture, has been designated as the federal agency to promulgate regulations to govern the administration of surplus food distribution, and is the agency responsible for the program.

Principal regulations affecting the surplus food program include:

1. Such state and federal agencies as are designated by the Governor, the Legislature or proper federal authority, and approved by the Secretary of Agriculture, shall be eligible to become distributing agencies;
2. A "distributing agency" means a state, federal or private agency which enters into an agreement with the U.S. Department of Agriculture for the distribution of commodities to eligible recipient agencies and recipients (a distributing agency may also be a recipient agency);
3. A "recipient agency" means schools, summer camps for children, institutions, welfare agencies, or disaster organizations receiving commodities for their own use or for distribution to eligible recipients;
4. "Welfare agencies" are defined as recipient agencies receiving commodities for distribution to eligible recipients which include federal, state or local agencies offering assistance on a welfare basis to needy persons who are not in institutions.<sup>3</sup>

Regulations affecting the terms and conditions of a designated distributing agency's agreement with the U.S. Department of Agriculture must include provision that:

1. Commodities are to be requested and accepted only in such quantities as can and will be fully utilized without waste (if not consumed in the period for which they were allotted, the agency may be held financially responsible);
2. Commodities received are to be used solely for the benefit of persons served or assisted by the recipient agency and cannot be sold or traded. Written approval must be requested by the state distributing agency if the commodities are disposed of to other than a recipient agency named in the agreement. However, there may be a transfer of commodities between recipient agencies upon authorization of the state distributing agency if determined to be in the best interest of the distribution program;
3. Normal food expenditures of persons receiving surplus food will not be reduced;
4. Proper storage facilities are available and subject to inspection by the U.S. Department of Agriculture and the state agency;
5. Books and records will be kept pertaining to the receipt and use of commodities and reports furnished to the federal agency. (Records will be subject to federal inspection.)

<sup>3</sup> Source: Part 250, Section 250.3, General Regulations and Policies-Commodity Distribution. Federal Register of November 5, 1966 (31 F. R. 14297).

According to regulation, distributing agencies must, prior to making distribution to welfare agencies or households, submit for approval a plan of operation received from the recipient agency to the appropriate area office of the Commodity Distribution Division (Consumer and Marketing Service). This plan incorporates the procedures and methods to be used in certifying households in need of food assistance and making distribution of commodities to them. Distribution is required to be in accordance with the approved plan of operation, which must include:

1. The categories of households, one or both of the following, to which distribution will be made:
  - a. Public assistance households: Those in which all members are receiving benefits under the federally-aided public assistance programs or under local welfare programs; or those households in which some of the members receive such benefits, but all members are included in the determination to grant such benefits;
  - b. Non-public assistance households: Those in which none of the members receive benefits of a public assistance household, or in which some of the members receive such benefits but all members are not included in the determination to grant such benefits;
2. A statement that the public welfare agency shall be responsible for certification of the households;
3. A statement of the manner in which commodities will be distributed, including but not limited to, the identity of the agency or agencies that will distribute the commodities to be used, and the method of financing;
4. Assurance that Tribal Councils serving Indian households on reservations have been designated by the Bureau of Indian Affairs to so act;
5. Use of the state's standards to certify households as in need of food. If the standards used in the state's own welfare program are not used as these criteria, any other, or additional criterion to be used must bear a direct relation to such standards;
6. The method or methods used to verify certification of eligibility;
7. Periodic review of eligibility as specified by federal requirements;
8. Provision for identifying each person designated to receive commodities for a household;
9. Assurances that welfare grants or similar aid shall not be reduced because of the receipt of commodities;
10. Assurances that distribution of commodities shall not be used as a means for furthering the political interests of any individual or party, and that there shall be no discrimination because of race, creed or color;
11. Assurance that recipients shall not be required to make any payments in money, material or services, for or in connection with the receipt of commodities, and that they shall not be solicited in connection with the receipt of commodities for voluntary cash contributions for any purpose;
12. Provide the manner in which the distributing agency plans to supervise the program.



#### **IV. State Implementation**

##### **A. Organization and Administration**

In conformity with federal requirements, California named the State Department of Education as the distributing agency for surplus food in 1954. Within the department, the State Educational Agency for Surplus Property is responsible for the administration of the program.

In order to participate in the program, a welfare agency, *i.e.*, a county welfare department, requests the county board of supervisors to adopt a resolution stating the county's interest in participating in the surplus commodity program. This is followed by a proposed plan for operation of the program which must meet all federal and state requirements.

The plan of operation must be approved by the State Department of Education. After this agency's approval, it is sent to the San Francisco office of the Consumer and Marketing Service, U.S. Department of Agriculture, for final approval.

State requirements for participation in the program parallel those of the federal agency.

##### **B. Eligibility**

Households which have been certified as needy by the county welfare department may receive surplus food if they have adequate cooking facilities and fall within the definitions set forth in the federal requirements, which closely follow those for participation in the Food Stamp Program. Eligible households are categorized as public assistance and non-public assistance households.

Public assistance households include all members of a household included in the public assistance budget under one or more of the following public assistance programs:

1. Old Age Security;
2. Aid to Families with Dependent Children;
3. Aid to the Blind;
4. Aid to the Totally Disabled;
5. General Assistance as administered by the local public welfare agency;
6. Work Experience and Training Program (Title V, Economic Opportunity Act of 1964).

Services provided under the Medi-Cal program are not considered public assistance for commodity distribution purposes.

Non-public assistance households are those in which none of the members receive public assistance grants, or are mixed households in which some members receive public assistance but other members are not considered in the determination of the grant.

The county must verify eligibility for both non-assistance households and mixed households. If a household appears to be in immediate need of food, on the applicant's sworn statement as to household membership, income and liquid assets, it may be certified for one month's receipt of surplus food prior to the completion of eligibility verification.

Public assistance households are eligible upon application and without further investigation except to verify the number in the household and that each is considered in determining the public assistance grant.



Non-public assistance households are eligible if the monthly net income and liquid assets of the household members do not exceed those standards set forth in the Food Stamp Program.<sup>4</sup>

### C. Benefits

Under this program, surplus food is distributed to eligible needy persons without cost. Such persons may or may not be receiving a public assistance grant. However, if the household receives a grant and is participating in the Food Stamp Program, it is not eligible to receive surplus food.

Levels of welfare grants may not be reduced if surplus food is allotted to the household.

### V. Funding

This is a federally funded program in that commodities are bought and paid for by the U.S. Department of Agriculture. Although there is no charge for the food received, the county must pay the State Department of Education for handling and service charges.

### VI. Statistics

#### A. Total Expenditures for Surplus Food Program— Donated Commodities

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures*-----	1,735	2,230	1,731	2,263	3,840
2. Total administrative expenditures†-----	136	166	136	181	257
State administration-----					
County administration-----	136	166	136	181	257
3. Total assistance expenditures‡-----	1,599	2,064	1,595	2,082	3,583

\* Total expenditures equal net value of commodities plus service and handling expenditures.

† Service and handling expenditures.

‡ Net value of commodities.

#### B. Sources of Funds for Surplus Food Program—Donated Commodities

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures, federal-----	1,735	2,230	1,731	2,263	3,840
2. Administrative expenditures, federal-----	136	166	136	181	257
3. Assistance expenditures, federal-----	1,599	2,064	1,595	2,082	3,583

<sup>4</sup> See *Food Stamp Program*.

**C. Donated Commodities Units Count**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total units.....	175,500	213,254	177,795	238,040	327,167

**THE PRESCHOOL EDUCATION PROGRAM****I. General Description**

The Preschool Education Program is designed "... to provide equal educational opportunity to children of low income or disadvantaged families through ... preschool programs of an educational value ..."<sup>1</sup>

**II. Program Background**

The 1962 amendments to the federal Social Security Act liberalized provisions governing federal reimbursement for costs of certain services purchased from public or private agencies for the benefit of existing and/or potential AFDC recipients. Included in acceptable services were those designed to assist members of a family "... to attain ... capability for the maximum self-support and personal independence ..."<sup>2</sup> Federal reimbursement was to be granted for 75 percent of the cost of the services.

In California the Unruh Preschool Act of 1965 (AB 1331) was one response to liberalization of the federal law. In accordance with federal requirements, AB 1331 authorized establishment by approved public or private agencies of preschool educational programs for the children of low income and/or disadvantaged families. The Unruh Preschool Act became effective September 1965 and the first programs were initiated February 1, 1966.

**III. Federal Requirements**

Title IV of the 1962 Federal Social Security Act provided certain guidelines which a state was required to follow in order to receive federal reimbursement for a service initiated under its provisions. Any state having such a program was required by the amendments or by HEW regulations to:

1. Have an acceptable program of Aid to Families with Dependent Children (AFDC);<sup>3</sup>
2. Make available to AFDC children and their parents those services for maintenance and strengthening of family life, self-support, and self-care which are prescribed by the Secretary of Health, Education, and Welfare;

<sup>1</sup> *California Welfare and Institutions Code and Laws Relating to Social Welfare, 1967*. Sacramento: Department of General Services, Documents Section, 1967, Section 16150, p. 440.

<sup>2</sup> *Federal Social Security Act, Title IV, Section 401*, as quoted in *California, Welfare and Institutions Code and Laws Relating to Social Welfare, 1963*. A. C. Morison, compiler. Sacramento: California State Document Section, Printing Division, 1963.

<sup>3</sup> See *Aid to Families with Dependent Children*.

3. Have a general plan for aid and services which has been approved by the Secretary of Health, Education, and Welfare;
4. Refrain from racial, religious, or ethnic discrimination in the establishment and administration of the program.

The 1967 amendments to the federal Social Security Act and subsequent rulings from HEW require administration by the same organizational units at the state and local levels as are responsible for administration of 100 percent federally funded child welfare projects. The amendments also require review of the state's program at least once a year and submission of reports to the Secretary of HEW as requested.

#### **IV. State Implementation**

##### **A. Organization and Administration**

Overall supervision of the program is provided by the Department of Education under an interagency contract with the Department of Social Welfare. With regard to each local program and the agencies that operate them, the State Board of Education adopts guidelines and regulations and the Department of Education's Office of Compensatory Education supervises educational standards, reviews and approves applications for establishment of projects, inspects existing projects, provides program consultation, and administers funding.

The Department of Social Welfare designates target areas for establishment of programs, receives federal funds, and makes payments to the Department of Education. The Department of Social Welfare's requirements for licensing are enforced by the State Department of Education. A joint report on the preschool program is submitted to the Legislature by the Departments of Education and Social Welfare. Another annual report is prepared for the Legislature by the nine-man Governor's Advisory Commission on Preschool Educational Programs.

The agencies which operate the preschool programs may be either public or private. Acceptable applications from such agencies are accepted within the funding limits set by the state for such programs. About 75 percent of the programs are operated by public school districts. Under the guidelines of the Department of Education, the local agencies are required to have one qualified supervisor for each 15 children. There must be a ratio of one adult to each five children. It is recommended that one adult be an employed aide who is a welfare recipient and other adults be volunteers. Any project director or teacher in charge may have a California Elementary Credential or a Regular or Provisional Children's Center Permit. The permit makes it possible for persons with experience as assistants in Preschool Education Programs to begin teaching with little formal educational preparation. In 1966 the State Board of Education required that by 1972 any new applicant have at least a four-year college degree to be allowed to serve as teachers. This does not preclude continuation of former permit holders.

##### **B. Eligibility**

County departments of social welfare certify children for participation in the preschool program. Only children from 3 to 5 years of age

who are from families receiving AFDC aid or from families which are potential recipients of AFDC are eligible for enrollment. Priority is given to children from homes where English is not the principal language spoken. If their parents pay all or part of the costs, there is provision in the state law for inclusion of children who are not certified by a county social welfare department; however, this provision is rarely used.

### **C. Benefits**

Each Preschool Education Program has a strong educational focus. The educational component is required to involve parental participation through parent-teacher conferences, parent participation in classroom activities, employment of parents as aides and in parent advisory committees.

The children attend class two to four hours a day, five days a week. Most programs provide one meal plus a high protein snack. Funds are available for diagnostic speech and psychological services if they are unavailable from other sources, but no Title IV funds are available to finance provision of medical care. Some publicly provided medical and dental care is available to most of the children because they qualify for such services under the Medi-Cal program. The program can reimburse the cost of medical and dental screening examinations for children who are potential recipients of AFDC, but ineligible for Medi-Cal.

### **V. Funding**

Seventy-five percent of the state and local costs of operating the program are reimbursed by the federal government, and the remaining 25 percent is paid by the state. Some costs to local agencies are involved in providing the basic facilities within which classes are held. By means of approving only a certain number of local programs and limiting the maximum federal-state aid available per hour per child, the program is kept within both the amount appropriated by the California Legislature and the amount allocated to the state by the Department of Health, Education, and Welfare. The maximum federal-state expenditure allowed per child for each hour in the program is set yearly by the State Department of Education and the State Department of Social Welfare. The maximum was \$2.51 in fiscal 1966-67, \$1.95 in 1967-68, and \$1.91 in 1968-69.

When a local agency provides services which exceed in cost the reimbursable hourly maximum for each child, the excess costs must be paid from other sources. Sometimes local agencies absorb such costs. Occasionally programs receive joint funding from Title I of the federal Elementary and Secondary Education Act, the federal Economic Opportunity Act, or the California Children's Center program. Joint funding is encouraged to increase the number of children served, provide a wider range of services, and to reduce segregation by economic group or funding source.



**VI. Statistics****A. Total Expenditures for State Preschool Programs \***

(in thousands of dollars)

	Fiscal years		
	1965-66	1966-67	1967-68
1. Total expenditures.....	4,441	12,165	12,933
2. Total administrative expenditures.....	n.a.	34	33
State.....	n.a.	n.a.	n.a.
County.....	n.a.	34	33
3. Direct program costs.....	4,441	12,131	12,900

\* Source of statistics: Department of Social Welfare.

n.a. Not available.

**B. Sources of Funds for State Preschool Programs**

(in thousands of dollars)

	Fiscal years		
	1965-66	1966-67	1967-68
1. Total expenditures			
Federal.....	3,291	9,096	9,674
State.....	1,150	3,069	3,259
2. Administrative expenditures			
Federal.....			
State.....	n.a.	34	3
3. Direct program costs			
Federal.....	3,291	9,096	9,674
State.....	1,150	3,035	3,226

**C. Total Number of Participants**

	Fiscal Years		
	1965-66	1966-67	1967-68
1. Number of children approved for program.....	7,394	12,138	n.a.

n.a. Not available.

**CHILDREN'S CENTERS****I. General Description**

Children's Centers provide services to children from two years of age through the elementary years. These services are:

"... to aid them in developing the abilities and skills which will make school achievement more possible ..." and "... to provide supervision and instruction for children necessitated by the employment of women with children, who must be employed to achieve economic self-sufficiency for the family and for children of parents



in public assistance programs and other families who might become dependent on such programs . . ."<sup>1</sup>

## II. Program Background

The 77th Congress of the United States (1941) passed the Lanham Act providing federal funds to be used in establishing day care facilities. The program was to be carried out by participating states under the administrative directives of the Federal Works Agency, and costs of operation were to be met by a combination of federal funds and parent fees.

In January 1943, the California Legislature took advantage of the funds provided under the Lanham Act and enacted a bill authorizing establishment of Child Care Centers by local school districts under the supervision of the State Department of Education. The centers were facilities for care and supervision of 2 to 16 year old children of working mothers. They were primarily established because of the need for day care which developed as women were encouraged to fill the demand for workers during World War II.

With the conclusion of the war, federal support for day care was ended on February 28, 1946. The California Legislature provided two appropriations necessary for the continuance of Child Care Centers in the state through June 30, 1947. Major changes were made in the program in 1947. Beginning with fiscal year 1947-48 the state provided two-thirds of the program's costs, and parent fees the other one-third. Eligibility was based on a financial "means test" which was designed to restrict participation primarily to children from families with relatively low incomes. The only major change in the program from 1947 to 1963 was the establishment in 1959 of two pilot child care centers for care of physically handicapped and mentally retarded children.

## III. Federal Requirements

The Child Care Center Program, now called "The Children's Center Program", became a state-local financed program in 1946; therefore, there are neither federal funds nor federal requirements involved in it. However, some Children's Centers programs receive federal funds by contracting to serve children eligible under Preschool Education Programs funded by the federal Social Security Act, the Economic Opportunity Act, or the Elementary Secondary Education Act for short day instructional programs which Children's Centers provide. When a center receives federal funds, it is subject to existing federal requirements applicable under the particular federal program.

## IV. State Implementation

### A. Organization and Administration

Since 1965 the Child Care Centers have been known as "Children's Centers." Most of them are operated by local school districts; however, since 1965 county superintendents of schools have been permitted to establish centers. As of January 1, 1969, there were six counties operating 21 centers among a statewide total of 328. All centers are supervised by the Division of Public School Administration within the State

<sup>1</sup> *West's Annotated California Codes*, Vol. 28, "Education Code Sections 13801 to 20100, 1967 Cumulative Pocket Part", St. Paul, Minnesota: West Publishing Co., 1967, p. 89, Section 16601.

Department of Education and are subject to regulations and standards established by the State Board of Education.

AB 272 (Chapter 1209, Statutes of 1967) provided that in approving the establishment of new centers, highest priority would be given to those proposed for areas where the need for them is greatest. The same legislation required that the ability and intention of a school agency to continue a Children's Centers program with a Preschool Education Program<sup>2</sup> be considered in the process of selecting and approving new centers.

Since Children's Centers are under the immediate jurisdiction of local or county boards of education, personnel policies vary somewhat; however, some personnel policies have been established by the state. Supervisors and teachers of centers must have either a California Kindergarten-Primary or Elementary Credential or a Children's Center Permit. A Provisional Children's Center Permit can be obtained by a person with little formal educational preparation. For example, a person can obtain such a permit with: 1) one year of experience in a preschool program plus enrollment in an approved college course leading to a bachelor's degree, or 2) four years of experience as an aide or assistant in nursery school or preschool education programs. The provisional permit is good for two years and can be renewed if four semester hours of approved study have been taken during that time until a total of 12 semester hours are completed.

### **B. Eligibility**

Children from age two through the elementary years are eligible to participate in the program. More than 95 percent of the children who attend Children's Centers are eligible because their families' incomes are below the financial "means test." The means test is designed to restrict the program primarily to persons in lower income groups.

For a one-parent, one-child family the income maximum (*i.e.*, means test) is \$463 gross per month, plus \$84 gross per month for each additional child to an income maximum of \$883. For a two-parent, one-child family the means test is \$648 gross per month, plus \$84 gross per month for each additional child to an income maximum of \$984.31. All levels of the means test are 27½ percent higher than prior to 1967, when legislation was passed raising them to present levels.

Several categorical groups of individuals are exempted from the financial "means test" requirement. Sole parents, public school teachers, registered nurses, workers in essential industry, and crop processors and harvesters are exempted groups; however, they are required to pay the hourly "full cost" for supervision and instruction. Since 1965, persons in a rehabilitation or training program for AFDC parents have been permitted to enroll their children in Children's Centers.

In addition, the Unruh Preschool Act of 1965 (AB 1331) provides that a child involved in the Preschool Education Program may be eligible for participation in the Children's Centers program, if the

<sup>2</sup> See the *Preschool Education Program*.

family is unable to provide adequate supervision during the remainder of the day.

### C. Services

Children's Centers generally operate from 6 a.m. to 6 p.m., and a child may spend up to nine or ten hours a day in a center. During the day a nurse supervises the health program. Nutrition, including two snacks, one hot lunch, and, in some centers, breakfast is a part of the standard service for which a parent pays a fee. Some centers have the services of a clinical psychologist or use psychological and/or speech therapy programs available in the regular program of the sponsoring school district.

The 1965 Legislature changed the function of the centers from "care and supervision" to "supervision and instruction." There is, therefore, an educational component to the program.

The two 1959 pilot projects for care of physically handicapped and mentally retarded children were increased to four centers in fiscal 1964-65. In 1968, the centers were increased to twenty-seven and made a permanent and separate program called "Developmental Centers for Handicapped Minors."<sup>3</sup>

### V. Funding

Until 1967, the state paid two-thirds of the costs of operating Child Care Centers and the parents paid one-third. The weekly fee paid by each parent is based on the amount of family income and number of family members, but the average parental payment for each child was about 14 cents an hour. The state's payment was, therefore, about 28 cents per child per hour. Chapter 1538, Statutes of 1967, raised the state-parent ratio to 75:25, with the state paying about 42 cents per hour per child and the parent about 14 cents per hour. If costs to the local district operating the program exceed the amount available from the state and parents, those costs must be met by the district through an override tax.

Each school district or county office of education which operates a center provides housing and maintenance for the program and sometimes contributes the services of local personnel. In 1967, the state Legislature appropriated \$100,000 for preoperational costs of new centers. In 1968, \$1.8 million was provided for expansion and operational costs of existing programs, including \$200,000 for preoperational costs; and \$1 million was appropriated for construction of new centers. This construction money is provided to districts on a matching basis; however, an equalization formula based on assessed valuation within school districts is included. The equalization factor requires districts with relatively high assessed valuation to provide more money than is matched from the state. Districts with relatively low assessed valuations are required to provide less than half of the construction costs.

<sup>3</sup> State of California, *Support and Local Assistance Budget for the Fiscal Year, July 1, 1966 to June 30, 1967*, submitted by Edmund G. Brown, Governor, to the California Legislature, 1966 Budget Session, p. 1066.

The centers may provide child care services for a parent in the WIN program.<sup>4</sup> A center may be co-funded as a compensatory education project;<sup>5</sup> under the Federal Economic Opportunity Act;<sup>6</sup> under the Preschool Education Program;<sup>7</sup> or under a combination of them. At least one program is jointly funded under all of these programs and, in addition, receives local funds as the result of a property tax levy by the school district which operates it.

## VI. Statistics

### A. Total Program Expenditures for Children Centers \*

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	5,711	6,289	11,288	18,905	26,541
2. Administrative expenditures.....	n.a.	n.a.	n.a.	n.a.	n.a.
3. Direct program costs.....	5,711	6,289	11,288	18,905	26,541
Children Centers funds.....	5,711	6,289	6,954	6,945	11,500
Reimbursement from State Preschool Program funds.....			4,334	11,960	14,951

\* Source of statistics: State Budgets for years shown.  
n.a. Not available.

### B. Sources of Funds for Children Centers

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal (state preschool funds reimbursement).....			4,334	11,960	14,951
State.....	5,711	6,289	6,954	6,945	11,500

### C. Enrollment Hours

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Enrollment hours.....	21,128,078	21,951,772	24,095,622	23,994,880	24,146,254

<sup>4</sup> See the *Work Incentive Program*.

<sup>5</sup> See *Compensatory Education Projects under Title I, ESEA*.

<sup>6</sup> See *Economic Opportunity Act, Community Action Program*.

<sup>7</sup> See the *Preschool Education Program*.



## COMPENSATORY EDUCATION PROJECTS

### TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

#### I. General Description

Title I of the Elementary and Secondary Education Act (ESEA) made federal funds available to states. The funds were to be expended:

“ . . . to provide financial assistance . . . to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.”<sup>1</sup>

#### II. Background

In 1963 the California Legislature passed an act (the 1963 McAteer Act) which provided state financing for pilot projects in the area of compensatory education. The two-year pilot projects were to be operated by local school districts which submitted plans which conformed to the specifications of the act and were approved by the appropriate state agency. The State Department of Education was designated as the state administrative agency, and the program functions were delegated to the Office of Consultant on Compensatory Education, which was established within the department for that purpose. The consultant also worked with the newly-created Advisory Committee on Compensatory Education to advise the State Department of Education and the State Board of Education regarding the program.

Twenty-three pilot projects were instituted within the four county offices of education and nineteen school districts which chose to participate. Persons from preschool age through adulthood were involved in one or another of the programs, but most of the projects were designed to benefit children in the elementary grades. Among the 23 projects were programs involving preschool education; lowering of teacher-pupil ratios; after-school tutoring and study; remedial and corrective programs in reading, writing, and speaking; and curriculum modification.

On September 23, 1965, President Johnson signed a bill making \$77,886,286 available to school districts with concentrations of children from low-income families. This was Title I of the Elementary and Secondary Education Act. The California Legislature responded by passing the 1965 McAteer Act which provided an administrative framework for the program and approved the expenditure of \$1 million for research and development costs. The revised, federally-funded program of compensatory education became operational in California on February 1966. In that same year Congress amended Title I of the ESEA to provide federal support for education programs designed to meet the needs of children of migrant workers.

#### III. Federal Requirements

A state must present an acceptable plan to the U. S. Office of Education in order to participate in federal aid to compensatory education

<sup>1</sup> Section 201, Public Law 89-10, 89th Congress, H.R. 2362, April 11, 1965.



as provided under Title I. The plan must give assurance and provide procedures that the federal standards for operation of the program on the state and local level will be followed. The state agency responsible for overall administration of the program is required by federal law and regulations to provide for:

1. Coordination of the program with all similar programs, including those under the Economic Opportunity Act;
2. Proper disbursement and accounting of funds to local agencies;
3. Discontinuance of funds to any local agency whose combined state-local financial effort is less than that of fiscal 1963-64;
4. Assurance that Title I funds do not affect the amount of state funds that would have otherwise been provided to the local agencies;
5. Periodic reporting to the Commissioner of Education, U. S. Office of Education, at his request;
6. Certification by the State Attorney General that each agency undertaking a program for children from migratory farm families has the authority to do so;
7. Reasonable opportunities for fair hearings on complaints of local agencies whose applications for participation have been rejected;
8. Compliance by all participating agencies with the Civil Rights Act of 1964;
9. Annual evaluation of the effectiveness of the program.

Participating local agencies are required by federal law and regulations to submit an acceptable plan to the state agency. The plan and its execution must provide for:

1. A service area including at least 10 educationally deprived children;
2. Provision of services to those children who have the greatest need for assistance;
3. An attendance area that is reasonably coterminous to the project;
4. Provision of project services to appropriate children attending private schools within the project area;
5. Location of sole control and administration of all ESEA funds within the public agency itself;
6. Appropriate in-service training for agency personnel;
7. Cooperation with other similar projects in the area, including Community Action Programs established under the Economic Opportunity Act;
8. Appropriate procedures for evaluating the local program and making an annual report to the supervising state agency.

Under the 1966 amendments providing federal funds for approved programs of education for children of migratory farm families, state educational agencies were required to submit a plan for a program which (1) met the general requirements for ESEA programs, and (2) provided for coordination with similar programs in other states and with state programs under Title III B of the Economic Opportunity Act.

#### **IV. State Implementation**

##### **A. Organization and Administration**

The Office of Compensatory Education within the State Department of Education provides overall administration for compensatory education programs under Title I of the Elementary and Secondary Education Act. The office approves or rejects applications from local agencies, disburses federal funds to approved projects, and audits the local accounts. At the substate level only public school districts are allowed to prepare and operate programs. Districts whose applications are denied can appeal to the State Board of Education. An Advisory Committee on Compensatory Education Programs makes an annual report on the various programs.

The Migrant Section of the California Office of Economic Opportunity helps to coordinate a variety of programs for migrant farm families authorized under the ESEA, the Economic Opportunity Act, the federal Social Security Act, and state legislation. The 21 migrant centers in California are operated by public agencies and provide, in addition to compensatory education, housing, day care, and health services. School districts in which large numbers of migrant workers reside are aided in providing compensatory education to migrant children if they meet program requirements; and until August 31, 1968, a multi-district, multi-agency regional demonstration project was operated to serve as a model for statewide migrant education programs.

##### **B. Eligibility**

Local compensatory education programs funded under the Elementary and Secondary Education Act must serve educationally deprived children living within areas with high concentrations of low-income families. State law requires that emphasis be placed on programs for children 3 to 8 years of age, but children up to age 18 can be included if they have not graduated from high school. In addition, federal law specifies that children of migratory farm families shall be deemed eligible for the ESEA migrant programs for a period not in excess of five years residency in an area served by a project.

##### **C. Benefits**

The local programs receiving Title I funds include: (1) in-service training for school personnel; (2) early childhood education; (3) curriculum planning and development; (4) remedial and corrective projects; (5) professional and nonprofessional auxiliary services; (6) cultural enrichment projects; (7) school-community cooperation and extended use of school facilities; and (8) reduction of pupil-teacher ratios.

##### **V. Funding**

Programs under Title I of the Elementary and Secondary Act receive 100 percent federal funding; however, funds are not provided for construction, and the amount of funds for a state or local district are limited. If a local agency exceeds the amount appropriated to it and is unable to find other sources of funding, the local agency must meet the deficit itself. Some local projects (*e.g.*, preschool education—

day care centers) are jointly funded by one or more state and/or federal programs.

The maximum grant possible for any state is based on 50 percent of the per-pupil expenditure in the state for the prior fiscal year multiplied by the number of 5 to 7 year-old children in participating school agencies who are from families with low income and/or receiving Aid to Families with Dependent Children. Federal funds for payment of costs of migrant programs under ESEA are limited to a total of one percent of the available funds.

## VI. Statistics

### A. Total Expenditures for Compensatory Education Programs—Title I (ESEA) \*

(in thousands of dollars)

	Fiscal years		
	1965-66	1966-67	1967-68
1. Total expenditures.....	64,829	72,423	81,532
2. Total administrative expenditures.....	2,312	2,544	4,316
State.....	398	736	859
County/Local.....	1,914	1,808	3,457
3. Total direct program cost.....	62,517	69,879	77,216
Instruction.....	35,409	55,380	61,333
Health/food services.....	1,358	1,780	2,259
Pupil transportation.....	753	857	1,512
Operations and other services.....	24,997	11,862	12,112

\* Includes program for children in low income areas, and program for children of migratory workers.

### B. Sources of Funds for Compensatory Education Programs—Title I (ESEA)

(in thousands of dollars)

	Fiscal years		
	1965-66	1966-67	1967-68
1. Total expenditures, federal.....	64,829	72,423	81,532
2. Administrative expenditures, federal.....	2,312	2,544	4,316
3. Direct program costs, federal.....	62,517	69,879	77,216

### C. Enrollment Count for Compensatory Education Programs—Title I (ESEA)

	Fiscal years		
	1965-66	1966-67	1967-68
1. Total number of students enrolled.....	289,382	372,146	281,865

## ADULT BASIC EDUCATION

### TITLE III SUPPLEMENT OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

#### I. General Description

The purpose of the Adult Basic Education program is:

"... to encourage and expand basic education programs for adults to enable them to overcome English language limitations, to improve their basic education in preparation for occupational training and more profitable employment, and to become more productive and responsible citizens."<sup>1</sup>

#### II. Program Background

The need for adult basic education in the United States was revealed by the 1960 census figures. In California alone there were 1,300,000 adults who had less than eight years of formal schooling, and 14 percent of the state's population over 25 years of age was classified as functionally illiterate.

Title II-B of the Economic Opportunity Act of 1964 provided for adult basic education programs to be operated under state plans approved by the U. S. Office of Education. The California State Department of Education developed and submitted such a plan which was approved. However, an adult basic education program had been in operation in California over 100 years preceding the passage of the federal act. There were approximately 50,000 adults enrolled in California adult basic education classes in 1964.

In 1966, authorization for the federal program was transferred from Title II of the Economic Opportunity Act to Title III Supplement of the Elementary and Secondary Education Act.

#### III. Federal Requirements

Title III Supplement of the Elementary and Secondary Education Act requires that a state plan for adult basic education must be approved by the Commissioner of Education, U. S. Office of Education, Department of Health, Education and Welfare before a state can receive federal funds for such educational programs.

The state plan and subsequent state implementation are required to:

1. Give assurance that substantial progress will be made among all appropriate population segments in all areas of the state;
2. Provide for administration of the plan by the state educational agency;
3. Provide for cooperation between the state educational and state health agencies to provide health information and services necessary to enable participants to benefit from the program;
4. Provide grants to public and (since 1968) private nonprofit agencies for special projects, teacher training and research;
5. Provide for cooperation with Community Action Programs, Work Experience Programs, VISTA, Work Study, and other programs related to the anti-poverty effort;

<sup>1</sup> Public Law 89-750, Title III Supplement, Section 302, November 3, 1966, 80 Stat. 1216.



6. Provide for the state agency to keep adequate records to enable it to supply the Commissioner of Education with adequate reports when they are requested;
7. Provide fiscal control and accounting procedures as stipulated by the Commissioner of Education;
8. Spend at least as much nonfederal funds on adult basic education in the present year as was spent in the preceding fiscal year;
9. Provide no grant of funds under the program for sectarian instruction or religious worship.

Grants are available to public and private agencies for experimental projects and teacher training in the field of adult basic education. To be approved, projects must either involve use of innovative methods, systems, materials and programs of national significance and value or have unusual promise in developing comprehensive coordinated approaches to adult basic education.

The Elementary and Secondary Education Act states that no federal direction, supervision or control is to be exercised over curriculum, administration, or selection of instructional matter under the program.

#### **IV. State Implementation**

Under California's Plan for Adult Basic Education, school districts or other agencies develop projects and submit them for review and approval by the Bureau of Adult Education in the State Department of Education. The bureau staff coordinates the program for all approved agencies and assists them in planning and preparing their projects. The bureau also maintains cooperative relationships with the State Department of Social Welfare and other related state and federal agencies.

The program consists of elementary level instruction to persons 18 years of age and over, who have less than sixth grade education or its equivalent. Skills of reading, writing, speaking, listening, and arithmetic with content from the fields of citizenship, health practices, consumer knowledge, human relations, and home and family living are taught. Adult Basic Education provides education through the equivalent of the eighth grade with special efforts made to enroll the economically disadvantaged and to graduate students into skill training, employment and/or high school diploma programs.

#### **V. Funding**

The Commissioner of Education is authorized to reserve 10 to 20 percent of the funds authorized for Adult Basic Education for grants to agencies for training of teachers and development of instructional methods and materials. The remainder of the funds are distributed among states having approved plans for Adult Basic Education. Each state's allotment is based on the number of adults in the state with less than a sixth grade education or its equivalent in relation to the total number of such persons in all states. The federal program is designed to provide 90 percent federal and 10 percent state-local sharing of the costs. However, in California existing state expenditures in the field of Adult Basic Education have always surpassed the amount of state-local participation required.



**VI. Statistics****A. Total Expenditures for Adult Basic Education (ABE) Program**

(in thousands of dollars)

	Fiscal years			
	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	1,077	1,823	1,535	2,812
2. Total administrative expenditures.....	8	120	87	138
3. Total direct program costs (instruction).....	1,609	1,703	1,448	2,674

**B. Sources of Funds for ABE Program**

	Fiscal years			
	1964-65	1965-66	1966-67	1967-68
1. Total expenditures				
Federal.....	1,077	1,823	1,535	1,591
State and local.....	n.a.	n.a.	n.a.	1,221

n.a. Not available.

**C. Enrollments in ABE Program**

	Fiscal years			
	1964-65	1965-66	1966-67	1967-68
1. Accumulative enrollments.....	2,631	21,584	28,795	34,386

**MANPOWER DEVELOPMENT AND TRAINING ACT PROGRAM****I. General Description**

The federal Manpower Development and Training Act Program provides basic education, prevocational training, training in employability and communication skills, and occupational training to unemployed and underemployed persons who cannot be expected to find appropriate full-time employment without such training. Training is available in all jobs, but training in professional jobs is limited to short refresher or re-orientation courses. Training services may be institutional, on-the-job, or a combination of classroom skill and on-the-job training.

**II. Program Background**

"The Manpower Training and Development Act of 1962 (S 1991-PL 87-415), signed March 15, authorized a new federal program to

train workers to help alleviate unemployment and to provide skilled personnel in certain industries. Under this program, the United States Employment Service and associate state agencies were assigned responsibilities for helping determine manpower needs; selecting candidates for training; placing retrained persons and various other functions."<sup>1</sup> The act also "permitted the Secretary of Labor to pay living allowances to workers being trained, plus transportation costs where necessary, for up to 52 weeks per person. The living allowance would be based on average state unemployment insurance benefit rates in the locality. Normally, living allowances could be paid only to unemployed workers supporting families and with no less than three years of prior work experience; however, payments in certain cases, limited to 5 percent of the total spent for living allowances, could be made to youths of 19-21. Payments to those 19-21 could not be more than \$20 a week in any case."<sup>2</sup>

In 1963, Congress enacted HIR 8720—PL 214 which made major changes in the scope of the Manpower Development and Training Act. The changes were designed to help illiterate and out-of-school youths who were not eligible for aid under restrictions in the 1962 act. The 1963 amendments were the first of many which were directed toward reaching more of the severely disadvantaged.

### III. Federal Requirements

Under Title II, Parts A and B of the act, federal administration of the MDTA training programs is assigned jointly to the Department of Labor and the Department of Health, Education and Welfare. Funds for carrying out training services are apportioned among the states on the following basis: 80 percent of the funds are allocated in accordance with standards which reflect each state's employment and unemployment situation in relation to the nation as a whole; the remaining 20 percent is allocated by the Secretary of Labor and the Secretary of Health, Education and Welfare "as they find necessary or appropriate to carry out the purpose of Title II."<sup>3</sup>

Under the act, the Secretary of Labor is designated specific duties in relation to the selection of trainees, providing training allowances and adoption of on-the-job training programs. Those agencies authorized to select trainees are required in their selection procedures to:

1. Provide a program for testing, counseling, and selecting for occupational training those unemployed or underemployed persons who cannot reasonably be expected to secure appropriate full-time employment without training;
2. Provide, whenever appropriate, a special program for the testing, counseling, selection, and referral of youths, 16 years of age or older, who because of inadequate educational background and work preparation are unable to qualify for and obtain employment without such training and schooling;

<sup>1</sup> *Congress and the Nation, 1945-64*, The Congressional Quarterly, Washington, D.C., Congressional Quarterly Service, 1965, page 1306.

<sup>2</sup> *Ibid.*, page 1223.

<sup>3</sup> *Manpower Development and Training Act*, as amended November 8, 1966, 80 Stat. 1451, Section 301, Title III. (PL 89-794)

3. Provide, where appropriate, a special program of testing, counseling, selection, and referral of persons 45 years of age or older;
4. Extend priority in referral for training to unemployed persons and to the maximum extent possible, other persons qualified for training programs which enable them to acquire needed **skills**;
5. Determine the occupational training needs of referred persons, provide for their orderly selection and referral for training, and provide counseling and placement services to persons who have completed their training, as well as follow-up studies;
6. Determine that there is a reasonable expectation of employment in the occupation for which the person is to be trained, before selecting a person for training;
7. Make referral of persons for training in an occupation which requires less than two weeks' training only if there are opportunities for immediate employment;
8. Provide for a duration of training which is reasonable and consistent with the occupation for which the person is to be trained;
9. Adopt procedures for termination of training and allowances for persons who do not have a satisfactory attendance record or who are not making satisfactory progress without good cause;
10. Provide an experimental program for part-time training of persons to meet skill shortages.

In adopting or approving any on-the-job training program, provision must be made to insure adherence to appropriate training standards, including assurances that:

1. The training content of the program is adequate, involves reasonable progression, and will result in the qualification of trainees for suitable employment;
2. The training period is reasonable and consistent with periods customarily required for comparable training;
3. Adequate and safe facilities, and adequate personnel, records of attendance, and progress are provided;
4. The trainees are compensated by the employer at rates deemed reasonable.

The general responsibilities of the Secretary of Health, Education and Welfare in relation to this act, are to:

1. Enter into agreements with states under which the appropriate state education agencies will undertake to provide training needed to equip persons for the occupations specified;
2. Arrange for institutional training, including but not limited to basic education, employability and communication skills, pre-vocational training, vocational and technical programs, and supplementary or related instruction for on-the-job training with priority given (as a result of the 1968 amendments) to the use of skills centers.

As a result of Congressional action in 1968 (PL 90-636), states which have an approved plan under a comprehensive area manpower planning system or which meet other planning requirements are given the authority to approve applications, under specified circumstances, without further approval from the federal government. Under this amendment states would have the authority to approve (1) project applications in an amount not to exceed 20 percent of the funds apportioned to each state, and (2) all other project applications which conform to the approved state plan unless they are disapproved by either of the administering federal agencies within 30 days. (This change has not been implemented, as federal regulations have not been issued.)

#### **IV. State Implementation**

##### **A. Organization and Administration**

In California the training program is divided into 1) on-the-job (OJT), and 2) educational, skill, and pre-vocational (institutional) training, with the services channeled through the Departments of Employment, Industrial Relations, and Education.

From the initiation of the MDT program until early 1968, the Department of Industrial Relations through the Division of Apprenticeship Standards was responsible for initiating and developing training programs for the OJT portion of the program. Division staff worked directly with employers, public and private agencies, trade associations, labor organizations and other industrial and community groups qualified to participate in effective training programs, to develop the content and provide the training facilities for the OJT projects. Project plans, after discussion with local advisory committees, were subject to state and federal approval. The division through its field representatives followed up on the progress and performance of the approved OJT projects.

The procedure for initiating and developing on-the-job training programs changed early in 1968 as a result of federal administrative action which established the JOBS (Job Opportunities in the Business Sector) program through the National Alliance of Businessmen (NAB). Most of the services formerly provided by the Division of Apprenticeship Standards will now be carried out through the Bureau of Work Training Programs in the Federal Department of Labor. All development of training programs will be at the regional level.

Except for the OJT projects initiated prior to 1968, the Division of Apprenticeship Standards no longer initiates and develops the OJT projects. The only responsibility it will carry in relation to the new program is to provide monitoring of and services to the contracts negotiated by the federal government for OJT services within the State of California.

The Department of Education through the office of Vocational Education provides the classroom and laboratory (institutional) portion of the training program. The State Department of Employment notifies the office of Vocational Education of the need for a specific type of training or for a combination of types of training. These types of training include basic education training, specific occupational training, and multi-occupational training designed for entire job families or spe-



cific job clusters. The Department of Employment also furnishes information on the characteristics of the trainees to be served, labor market information, training goals, and conditions of potential employment. In light of this information, the office of Vocational Education prepares a training plan, including a curriculum, and estimates the need for and costs of instructors, facilities, equipment, and supplies for the course. An adult school, high school, junior college or private business or industrial school located in the specified training area which is qualified to provide the training course and which has agreed to provide services under the provision of the act, is designated to undertake the project. After the proposal has been fully developed, it is presented to a federal-state review team for funding. This team consists of representatives of the U.S. Departments of Labor and Health, Education, and Welfare, and the State Departments of Employment and Education.

The Department of Employment has responsibility for conducting surveys to determine which occupations are appropriate training objectives and to establish general guidelines by which individuals are selected for training in particular occupations. Programs developed in accordance with these MDT program guidelines are reviewed by and included in an overall plan of the Cooperative Area Manpower Planning System (CAMPS), which is an interagency planning committee designed to improve operation of various manpower programs through cooperative linking and combining of training efforts. Local employment offices screen applicants interested in and suitable for training, provide testing and counseling services, and refer those selected to the institutional or OJT training programs. The department through its local offices has the responsibility for placing trainees, but other organizations and institutions participating in the program assist in the placement process.

Individuals enrolled in training who have been determined eligible for MDTA allowances receive weekly payments. These training allowances are determined according to a fixed formula by special MDT payment units.

Five basic types of training projects are provided in the MDT program: (1) single occupational projects; (2) multiple occupational projects that may include basic education and prevocational education; (3) on-the-job training; (4) coupled programs; and (5) individual referral projects.

As a result of state legislation enacted during the 1968 General Session (AB 1463, Chap. 1460 HRD Act of 1968) functions of the State Department of Employment and three other state agencies will be reorganized into the Department of Human Resources Development. Although the full impact of this legislation on the MDTA program cannot be known until the reorganization is fully implemented, the act calls for the coordination of all job training and placement programs through the Division of Job Training and Development.

### **B. Eligibility**

Persons eligible for training under MDTA include those who are:

1. Unemployed or underemployed (Includes farm families with less than \$1,200 annual net family income). Underemployed is



- defined as (a) working below skill capacity, (b) working substantially less than fulltime, or (c) working or will be working less than full-time or will be unemployed because skills have become or will become obsolete;
2. Sixteen years of age or older and unable to obtain employment without training or schooling.<sup>4</sup>

### C. Benefits

The training allowances available under the program are based upon the following factors:

1. Head of household, or member of household where head of household is unemployed; *or* youths who have completed high school or have not attended school for at least one year and it has been determined that further attendance in a regular academic or vocational program is no longer practical.

From December 1963 until November 1966 youth allowances were given only to persons 17 through 21 years of age. After November 1966 allowances were made available to persons 17 years and older not eligible as a head of household. Allowances for youths under 21 are limited to 25 percent of all persons receiving allowances.

2. Gainful employment.

From 1963 until November 1966 two years of gainful employment was required of a head of household. In 1966 this requirement was reduced to one year.

Training allowances are available for up to 104 weeks. From 1963 until November 1966 such allowances were available for up to 72 weeks. As a rule, the determination of the amount of the weekly training allowance is based upon whether the trainee is an unemployed head of household or a youth. If the trainee is an unemployed head of a family receiving institutional training, allowances are based on the average weekly unemployment compensation paid under state law, plus \$5 a week for each dependent up to a maximum of six dependents. In general, persons enrolled in on-the-job training receive wages which are commensurate with their capability as a trainee.

Prior to November 1968 youths who required a training allowance in order to undertake training received up to \$20 a week. As a result of the 1968 amendments the allowance has been increased to the minimum MDTA weekly training allowance which is currently \$51.

Persons engaged in training may work up to 20 hours a week without having the wages deducted from their training allowance.

In addition to the regular training allowance, transportation and subsistence allowances may be paid to persons engaged in training programs located outside the commuting area of the regular place of residence. Transportation allowances generally cannot exceed 10¢ a mile; subsistence rates cannot exceed \$5 a day.

### V. Funding

From the inception of the MDT Program to July 1, 1966, allowable costs of training projects and state direction and supervision were

<sup>4</sup> *Retraining in California, 1964 Report, California State Department of Employment, California State Department of Education, p. 9.*

financed 100 percent by the federal government. The federal share of allowable costs for institutional projects approved after June 30, 1966, and costs of Department of Education administration is 90 percent. However, the actual federal cost exceeds 90 percent as instruction projects provided by private agencies are excluded from the 10 percent cost-sharing factor. OJT projects and other state administrative costs continue to be financed 100 percent by the federal government.

The nonfederal share of costs may be determined on a statewide basis, may be in cash or in-kind, and may include plant, equipment and services derived from state sources or public or private agencies which provide approved training programs under MDTA.

## VI. Statistics

### A. Total Expenditures for Manpower Development and Training Act (MDTA) Programs

(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	7,506	19,592	34,866	37,022	58,168
By program					
MDTA—basic.....	3,115	7,303	16,289	18,327	21,802
MDTA—OJT.....	15	743	3,741	5,522	4,648
MDTA—vocational education.....	4,376	11,546	14,836	13,173	15,769
Jobs.....					†15,949
2. Total administrative expenditures.....	461	795	1,448	1,649	1,804
MDTA—basic.....	260	530	537	442	634
MDTA—OJT.....	15	36	535	723	588
MDTA—vocational education.....	186	229	376	484	582
3. Total program costs (training).....	7,045	18,797	33,418	35,373	56,364
Direct program costs					
MDTA—basic.....	376	931	1,686	2,249	2,159
MDTA—OJT.....	n.a.	707	3,206	4,799	4,060
MDTA—vocational education*.....	4,190	11,317	14,160	12,689	15,187
Jobs.....					†15,949
Allowance payments					
MDTA.....	2,479	5,842	14,066	15,636	19,009

\* Allowance payments of MDTA—OJT included in MDTA—Basic.

\* Includes local administration, not over 10 percent of program expenditures.

† Obligated federal funds, actual expenditures not available.

n.a. Not available.

**B. Sources of Funds for MDTA Programs**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total expenditures					
Federal.....	7,506	19,592	34,866	35,715	57,425
State.....				1,307	743
2. Administration expenditures					
Federal.....	461	795	1,448	1,611	1,765
State.....				38	39
3. Placement/training					
Program costs					
Federal.....	4,566	12,955	19,352	18,468	36,651
State.....				1,269	704
Allowance payments					
Federal.....	2,479	5,842	14,066	15,636	19,009

**C. Trainee Count for MDTA Programs**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
1. Total all programs					
Offered training.....	6,476	12,980	24,600	29,070	*19,326
Public assistance recipients.....	767	2,046	3,290	3,188	*2,328
Percentage of total.....	12%	16%	13%	11%	12%
2. Institutional training†					
Enrolled in training.....	5,420	10,881	16,284	11,839	14,246
Public assistance recipients.....	735	1,891	2,880	2,152	2,546
Percentage of total.....	14%	17%	18%	18%	18%
3. On-the-job training					
Enrolled in training.....	674	1,109	6,812	15,999	18,203
Public assistance recipients.....	3	17	225	870	1,407
Percentage of total.....		2%	3%	5%	8%

\* Figures represent first six months of fiscal year 1967-68 only.

† Includes both institutional and redevelopment area resident trainees.

**HUMAN RESOURCES DEVELOPMENT CONCEPT****I. General Description**

The Human Resources Development (HRD) Concept is a functional approach to achieve the following objectives:

- (1) To develop the skills and abilities of the unemployed and underemployed to a degree of job readiness acceptable to employers;
- (2) To create a receptive attitude on the part of employers;
- (3) To place applicants in jobs that make maximum use of their assets and potentials.<sup>1</sup>

**II. Program Background**

The program was not in existence prior to fiscal year 1963-64, the base year of this report.

<sup>1</sup> *Inventory of Manpower Development Programs Involving Employment Security Administration*. State of California, Dept. of Employment, June 30, 1968, page 7.

### III. Federal Requirements

The HRD Concept, initiated in March 1967, is a federally designed program which "... marks an important step in the Federal-State Employment Service's determination to redefine its mission and to respond vigorously and effectively to the changing manpower needs of our society . . . . (It) is predicated on the certainty that the service can perform an *active and useful* role for the unemployed *and underemployed and employers alike*."<sup>2</sup>

The services provided through the HRD effort are: (1) outreach, (2) employability improvement, (3) job development and placement, and (4) job market information.

"The primary function of personnel engaged in outreach is to establish personal contact and communication with the hardcore unemployed and underemployed, to explain the services available under the HRD Concept, to motivate and refer those contacted to the appropriate Employment Service facilities or, in some obvious cases, to another agency for remedial or supportive services."<sup>3</sup>

Employability improvement services are directed toward developing those qualities and skills in a person that give him reasonable expectation of securing meaningful employment. Improving employability is to be achieved by providing interviewing, counseling, training and supportive services to individuals who are unemployed or underemployed.

Job development and placement services are designed to create job opportunities for large numbers of the hard-core unemployed who are qualified for immediate referral, as well as those who go through the HRD employability and training process. To fulfill this objective, employers are to be approached directly to gain their support in employing the less competitive and to develop job openings for applicants instead of the usual "order-filling" function of finding an applicant for the job.

The goal of the placement function is to find placements in jobs which offer an opportunity to learn and advance. To evaluate employer satisfaction and placement success, a follow-up system is recommended.

In the dissemination of job market information the HRD Concept requires changes in the direction and focus of the job market and area labor information programs. The goal of this function is to present job market information in such a manner and in such places that actually reach, and are effective for, the long-term unemployed and underemployed.

### IV. State Implementation

#### A. Organization and Administration

The HRD Concept is implemented through the services of the State Department of Employment and its area and local offices.

In order to implement the concepts embodied in HRD, an additional 194 positions have been assigned to the Department of Employment. These 194 positions have been used to augment the staff of the six

<sup>2</sup> *The Human Resources Development Concept*, U.S. Dept. of Labor, Manpower Administration, Bureau of Employment Security, U.S. Employment Service; U.S. Government Printing Office 1967, page 1.

<sup>3</sup> *Ibid.*, page 17.



Service Centers<sup>4</sup> and 17 local offices that serve large concentrations of disadvantaged persons. While these 23 offices have been allocated additional staff to work with the disadvantaged, each Employment Service local office is within available staff resources, emphasizing services to the disadvantaged. Those staff members assigned to outreach services although attached to an employment office, are generally located in the target community, frequently in space made available by a Community Action Program or other neighborhood agency.

The special services available to disadvantaged persons through the HRD program are not limited to those persons served by HRD staff. These services are available to disadvantaged persons in employment offices which have not been allocated additional staff and are provided by staff which has not been specifically financed for the HRD program.

The training services which are part of the employability improvement effort are not provided by HRD staff. If an HRD applicant requires training, he is referred by the Employment Service to one of the existing training programs, such as WIN, MDTA, etc.

### B. Eligibility

There are no fixed eligibility requirements for the HRD program. Instead, the federal government established a set of guidelines which serve as a means of identifying the disadvantaged who could benefit from the special services of the HRD staff.

An HRD, i.e., disadvantaged applicant meets all three of the following criteria:

1. An individual or a member of a poor family (an individual living alone or in group quarters is considered a family):
  - a. Receiving cash welfare payments, or
  - b. Who is the head of the household who has been unemployed in excess of 15 weeks prior to registration, or
  - c. Has an annual family net income which does not exceed the following:

Family size	Income constant	Income limit
1	\$1,800	\$1,800
2	2,000	1,900
3	2,500	1,800
4	2,500	2,200
5	2,800	2,200
6	3,200	2,600
7	3,700	2,900
8	3,900	3,200
9	4,200	3,500
10	4,300	4,000
11	4,800	4,300
12	5,300	4,600
13 or more	5,800	5,000

2. Does not have suitable employment, i.e.,
  - a. Has been seeking employment during past four weeks, or
  - b. Is underemployed, or
  - c. Is not seeking employment but would do so if assistance were provided in overcoming whatever barriers stand between

<sup>4</sup> See Service Center Program.



himself and possible employment opportunities. Included in this category is the individual who would seek employment if he believed employment, transportation, or child care facilities were available to him, or the individual who is not seeking employment because his attitude or motivation prevents him from doing so;

3. Is one of the following:
  - a. A school dropout;
  - b. A member of a minority group;
  - c. Under 22 years of age;
  - d. Over 45 years of age; or
  - e. Handicapped.<sup>5</sup>

As defined by employment service guidelines, the HRD services are available to any person who is disadvantaged or who is likely to become disadvantaged because he possesses qualities which are not acceptable to the employer.

### C. Benefits

The benefits provided under the HRD Concept consist of the specialized services, adapted to the individual need of each disadvantaged applicant, which place him in employment or make him more employable.

### V. Funding

HRD activities are 100 percent funded by the federal government, primarily under Title II of the Manpower Training and Development Act and Title III of the Social Security Act.

### VI. Statistics

#### A. Total Expenditures for Human Resources Development (HRD) Programs \*

(in thousands of dollars)

	Fiscal years	
	1966-67	1967-68
1. Total expenditures.....	1,329	554
2. Total administrative expenditures.....	n.a.	n.a.
3. Total direct program costs (base services costs).....	1,329	554

\* Exclusive of expenditures in Service Centers.  
n.a. Not available.

#### B. Sources of Funds for HRD Program

	Fiscal years	
	1966-67	1967-68
1. Total expenditures, federal.....	1,329	554

\* Source of Guidelines: Human Resources Development Guide Card, State of California, Department of Employment, DE 4691 HRD Rev. 3 (7-66).

**C. Selected HRD Program Activities Count**

	Fiscal years	
	1966-67	1967-68
1. Total intake.....	n.a.†	242,862
2. Counseling interviews.....		125,005
3. Referrals to supporting services.....		10,728
4. Enrollment in training.....		18,508
5. Total referrals.....		184,219
6. Total placements.....		74,834
7. Total follow-up contacts.....		22,343

† Activity data reporting began August 1967.

n.a. Not available.

**WORK INCENTIVE PROGRAM (WIN)****I. General Description**

The intent of the Legislature in enacting the Work Incentive Program was to:

“... reduce the incidence of persons with potential for self-support in existing AFDC caseloads and thereby permit a greater concentration of services and other resources toward improving conditions of life for dependent persons.”<sup>1</sup>

The WIN program is a joint effort between the Department of Social Welfare and the Department of Employment. The Department of Employment administers the program to provide incentives, opportunities and necessary services to provide for: (1) the employment of such individuals for work in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in special work projects, thus restoring the families of such individuals to independence and useful roles in the community.

The Department of Social Welfare has responsibility for the referral process, plus continuing social services, especially providing work or training related personal expenses for incidental costs, child care, and transportation.

**II. Program Background**

In 1957 Congress appropriated five million dollars for demonstration projects (including Job Training and Placement Projects) *designed to reduce dependency in welfare caseloads*. In 1961 the State of California implemented the Job Placement and Training Projects in a few counties as one type of demonstration program to reduce dependency among welfare recipients.

Enactment in 1962 of PL 87-543 provided federal participation for community work and training projects on a statewide basis. These amendments to the Social Security Act shifted the emphasis from “work for relief” to work experience and training designed to help the recipient develop marketable skills. When AB 59 (Stats. 1963, Chapter 510) went into effect February 1, 1964, it required counties

<sup>1</sup> Welfare and Institutions Code, Division 9, Part 3, Chapter 2, Section 11302.

to establish a community work experience and vocational training program for unemployed persons to help them become self-supporting. The intent was to provide employment for recipients in projects "... which serve a useful public purpose, do not result in either displacement of regular workers or in the performance of work that otherwise would be performed by employees of public or private agencies, institutions or organizations . . ."<sup>2</sup>

The Community Work and Training (CWT) program, funded under Title IV of the Social Security Act, reimbursed counties up to 75 percent of the cost of employing personnel to provide training and work experience services. These services were funded and provided in much the same manner as the other social and casework services available to public assistance recipients. All recipients were eligible for the CWT program; however, recipients of AFDC and ATD were the *primary* beneficiaries.

The training or work experience was provided primarily in public agencies. Since funds were not available through the CWT program for work-related expenses, these expenses were partially met by providing a \$25 monthly allowance in the grant of each recipient who participated in the program.

In August 1964 another means of providing training programs was established under Title V of the Economic Opportunity Act, (PL 88-452). The new Work Experience and Training program, as it was called, was essentially the same as the CWT program except that it was 100 percent federally funded. It was extended to the unemployed AFDC father who previously was not eligible for federal aid and to all "hard-core" unemployed, regardless of the receipt of public assistance.<sup>3</sup>

The last CWT program was terminated in January 1969 with the advent of the WIN program in each of the participating counties.

### III. Federal Requirements

The Work Incentive Program (WIN) was established as part of the 1967 amendments to the Social Security Act (PL 90-248). It is administered by the Department of Labor through the state employment offices. The Department of Health, Education, and Welfare is a co-operating agency.

The federal law provides that all employable males who are federally eligible for, and receive, AFDC payments be referred within 30 days to the WIN program.

It also provides for exemption of the following types of AFDC recipients from participation in the program:

1. Children who are under 16 or going to school.
2. Any person with illness, incapacity, advanced age, or remoteness from a project that precludes effective participation in work or training.
3. Persons whose continuous presence in the home is required because of illness or incapacity of another member of the household.

<sup>2</sup> Stats. 1963, Chapter 510, page 1376, Section 1.15.

<sup>3</sup> See *Economic Opportunity Act, Title V, Work Experience and Training Program*.

Additional limitations related to the WIN program are:

1. Persons must not be denied aid because of referral to or participation in the program;
2. Any additional expenses attributable to participation in the program must be considered in determining an AFDC recipient's need;
3. States must disregard training incentive payments in determining need. Income from special work projects does not affect the grant since the amount of the grant, without reference to special work project income, is transferred to a special fund to reimburse a portion of the salary paid by the employer;
4. Families must be placed on controlled payments when the Employment Service notifies the welfare agency that the person referred has without good cause refused to accept employment or to participate in the program. For the first 60 days after such notification, the state must include in the family grant the person involved if he is accepting counseling aimed at his participation. After that, controlled payments must be continued, but only for the children.

The federal law also requires that a referred recipient be enrolled in one of the three priority categories:

1. Regular employment or on-the-job training.
2. Institutional or work experience training.
3. Persons unsuited for (1) or (2) would be placed for employment with nonprofit private and public employers. Persons who would otherwise be able to participate in (1) or (2) for whom no jobs can be found are also included in (3).

#### **IV. State Implementation**

##### **A. Organization and Administration**

California implemented the WIN program with AB 210 (Stats. 1968, Chapter 1369). This legislation establishes the Department of Employment as the administrative agency and the Department of Welfare as the cooperating agency. It provides for immediate referral of all AFDC-U cases that are potentially eligible for WIN services and states the circumstances under which a person may be excluded from participation.

To protect the recipient and the public, the program provides for responsibility in hearing cases when there is a refusal to participate. All hearings involving WIN cases will be heard by the California Unemployment Insurance Appeals Board. Good cause for not participating is to be presumed when: (1) participation would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support, or conflict with imminent likelihood of re-employment at the person's regular work; or (2) the assignment is not suited to the person's abilities or potential, or will not lead to realistic employment opportunities suited to his abilities or potential.

Because of limited state financing, only 12,000 training positions are available, and the program has been established in only 26 counties. Therefore, in order to provide continuing services and prepare recipients already in work training programs, the Educational Training



Program (ETP) has been authorized by the state. The purpose is to provide work training and experience to AFDC recipients when: (1) there is no WIN program in the county, or (2) when the WIN program has not achieved its capacity to enroll and assign all appropriate federally eligible AFDC recipients. ETP projects are currently *limited* to WIN eligibles; however, regulations are pending to expand ETP to non-WIN eligibles.

The ETP program is only to be in operation until such time as the WIN program can assume the responsibilities. The county welfare departments cannot operate an ETP program without prior approval of the Department of Social Welfare, which in turn consults with the Department of Employment to assure there will be no duplication or overlapping with WIN capabilities.

To provide services for those adults on AFDC who are not eligible for the WIN or ETP programs, the Social Rehabilitation Services (SRS) program has been authorized to go into effect with the WIN and ETP programs. This program is operated by county welfare departments and is designed to enhance the functioning ability of families through child-rearing, family and marriage casework services, homemaking and housekeeping standards, use of community resources, and other services to strengthen and prevent family disorganization. As distinguished from the WIN and ETP programs, the *SRS program is open to all persons on aid regardless of category*. Unlike the WIN program, the ETP and SRS services are provided by county welfare departments and are funded through the same means as the other social services available to public assistance recipients.

The county welfare departments are required to provide coordinating and liaison services as well as giving maximum preparation to recipients prior to referral to WIN. Such preparation is provided through Social Rehabilitation Services and Educational Training programs.

The county welfare department's responsibility in relation to the program is to provide:

1. An AFDC grant;
2. Day care for children;
3. Total transportation costs;
4. A \$25 standard allowance for extra food, uniforms, etc.;
5. Supporting casework services;
6. Cooperation with the Department of Employment regarding appropriateness of referrals;
7. Homemaker services when appropriate and available;
8. Assignment to Social Rehabilitation Services of those persons not eligible for WIN;
9. Assignment to the Educational Training Program.

The Department of Employment has the responsibility to assign a WIN referral to either: (1) regular employment or on-the-job training, (2) work experience or institutional training, or (3) a special work project. The costs of training materials such as tools, equipment, etc., are supplied through the WIN program.



### B. Eligibility

All recipients of AFDC<sup>4</sup> are eligible for the WIN program, except:

1. Those not federally eligible;
2. Children under 16 and those otherwise eligible who are attending school;
3. Any person who is ill, incapacitated, elderly or too remote from a project to provide effective participation;
4. Persons (a) whose continuous presence is required in the home due to illness or incapacity of another member of the household, or for child care services, or, (b) whose participation would be detrimental to the welfare of the children;
5. Any person who is involved in a training program other than WIN which is likely to provide full self-support.

After a county welfare worker has had a face-to-face interview with an AFDC recipient, the recipient is referred by the county welfare department to the local Employment Service for participation in the WIN program. An assessment interview is held to evaluate the individual's application and work experience for placement into employment, training, or a work project. Those persons who are job-ready, *i.e.*, have employable skills for which job openings are generally available, will be referred for employment. If an individual is not generally employable, he will receive counseling, testing and orientation to the world of work prior to being placed in employment or a training program.

Special work projects, which will soon be available, will be a source of placement for those persons for whom there is no other job or training available in the community or who need sheltered employment. Procedures are being developed to handle WIN referrals when training programs and work projects are filled.

The Educational Training projects are currently limited to WIN eligibles; however, the Social Rehabilitation Services are available to all public assistance recipients.

### C. Benefits

After an AFDC recipient has been assigned to the WIN program by the local employment service, work incentives are provided to the participants. The specific incentive is determined by the category of work or training into which the recipient is placed. The categories and incentives are:

Category	Incentive <sup>5</sup>
1. Regular employment or on-the-job training.	(a) \$30 per month plus $\frac{1}{3}$ of balance of wages are exempt in computing grant. (AFDC-U fathers in full-time employment receive no AFDC.)
2. Work experience or institutional training.	(a) \$30 per month incentive payment, (b) \$25 per month allowance for training-related expenses in addition to public assistance grant, (c) Cost of transportation, child care and other personal needs.
3. Special work projects (federally subsidized employment in public or private nonprofit agencies).	(a) Guaranteed income equal to public assistance grant the recipient would otherwise receive, plus 20% of gross wages. (If wages are not sufficient to equal the determined amount, a supplemental payment must be paid from public assistance.)

<sup>4</sup> See *Aid to Families with Dependent Children*.

<sup>5</sup> For calculation of amount of grant, see AFDC.

Those recipients placed in an Educational Training Program receive a \$25 monthly allowance in their AFDC grant to cover training-related expenses. There are no incentives or allowances provided for recipients who participate in the Social Rehabilitation Services program.

## V. Funding

The welfare costs of the Work Incentive Program are financed by 85 percent federal, 10 percent state, and 5 percent county funds. The funding for the Work Incentive Program which is administered by the Department of Employment is 80 percent federal and 20 percent state.

The Educational Training Program and the Social Rehabilitation Services are financed by 85 percent federal and 15 percent county funds. Beginning July 1, 1969, ETP and SRS will receive only 75 percent federal funding.

## VI. Statistics

### A. Estimated Expenditures for Work Incentive Program (WIN) \*

(in thousands of dollars)

	Fiscal years					
	1967-68	1968-69 <sup>a</sup>	1969-70 <sup>b</sup>	1970-71 <sup>b</sup>	1971-72 <sup>b</sup>	1972-73 <sup>b</sup>
1. Total expenditures.....	13	16,500	16,500	16,500	20,900	30,800
2. Total administrative expenditures.....	13	n.a.	n.a.	n.a.	n.a.	n.a.

### B. Sources of Funds for Estimated Expenditures

	Fiscal years					
	1967-68	1968-69 <sup>a</sup>	1969-70 <sup>b</sup>	1970-71 <sup>b</sup>	1971-72 <sup>b</sup>	1972-73 <sup>b</sup>
1. Total expenditures						
Federal.....	13	13,200	13,200	-----	-----	-----
State.....	-----	3,300	3,300	-----	-----	-----

\* Community Work and Training Programs expenditures which preceded WIN, are included in AFDC and ATD statistics.

<sup>a</sup> Estimated expenditures.

<sup>b</sup> Projected expenditures based upon percentage of federal funds projections.

n.a. Not available.

## SERVICE CENTER PROGRAM

### I. General Description

The purpose of the Service Center Program, also referred to as the "Poverty Reduction and Prevention Program" or the "Multi-Service Center Program," is to bring together at a centralized location within a particular area, all resources which can be mobilized to meet the problems of disadvantaged citizens. This coordinated program is designed to help these individuals establish economic independence, remove them from welfare rolls, and from prolonged dependency on government.

## II. Program Background

The Service Center Program is not specifically authorized by statute. In July 1966, it was created by an Executive Order of the Governor pursuant to the provisions of the Constitution and Government Code which assigns to the Governor the responsibility for the general supervision and administration of state government.

## III. Federal Requirements

The program, as such, is not governed by federal requirements; however, when the resources of a specialized program within another agency are utilized, *e.g.*, Social Welfare, Employment, etc., then the federal regulations of that particular program apply. The degree of federal control and participation is discussed within the applicable sections of this report.

## IV. State Implementation

### A. Organization and Administration

The Service Center Program was developed as a means of solving California's poverty problem, and was included in the Governor's 1966-67 Budget. Subsequently, through the coordinated efforts of the agencies which would be participating, five composite programs were developed and presented as an addendum to the budget. It was presented as "The Poverty Reduction and Prevention Program." This approach was viewed as an initial step toward providing the necessary implementation to coordinate fragmented governmental programs. Programs were often involved in red tape rather than concentrating on removing people from welfare and/or restoring them to the ranks of the self-sufficient.

The five programs named in the 1966-67 Budget addendum under the Poverty Reduction and Prevention Program were:

1. Multi-Service Center;
2. Improved Parole;
3. Manpower Utilization;
4. Education;
5. Skill Center.

The general analysis of the program included in the 1966-67 budget read as follows: "In response to recommendations contained in the Commission on the Los Angeles Riot Report on civil disturbance in Los Angeles, this budget provides for several new programs to be implemented in concentrated areas of poverty. These special programs are designed to cope with the problems of law enforcement, employment, training and retraining, education, health and welfare, and rehabilitation in these areas." The Improved Parole, Manpower Utilization, Education and Skill Center programs were either included with, or added to an existing state agency, or dropped entirely from the 1967-68 budget.)

Thirteen centers were selected for establishment during the fiscal year 1966-67. The locations were:

1. South Central Los Angeles (Watts)
2. East Los Angeles

3. Oakland
4. San Francisco
5. San Diego
6. Venice
7. Bakersfield
8. San Bernardino
9. Long Beach
10. Fresno
11. Vallejo
12. Stockton
13. Richmond

Operation of approved centers was authorized to begin July 1, 1966.

By Executive Order of the Governor, the number was reduced to five in the 1967-68 Budget:

1. South Central Los Angeles (Watts)
2. East Los Angeles
3. San Diego
4. Richmond
5. San Francisco

Venice (6) and Fresno (7) were subsequently added and are included in the 1969-70 Budget.

It was anticipated that some of these areas might require more than one center, each with a complete program. "For example, the size and complexity of South Central Los Angeles (Watts) make it difficult to adequately serve the large heterogeneous population from one central location."<sup>1</sup>

In developing the programs offered in the centers, a variety of new procedures were involved in improving services; and changes were made in traditional organizational structure. The appropriate federal, county, and local agencies and community action groups were co-ordinated. This pooling of services in "poverty pocket" areas is aimed at making available to citizens who need it, a meaningful program which will improve their vocational and economic status and an ensuing decrease in the burden on the taxpayer. The innovations include:

1. Mobilization of both public and private community resources to the maximum extent feasible to cope more effectively with the problems of California's economically and socially disadvantaged citizens. Special efforts are made to secure the participation of local and non-state agencies by sharing facilities and integrating all available services.
2. Reduction of re-referrals and repetitive completion of forms, to the maximum extent possible. Needed services are to be made available on a "one-step" basis by using a unified reception service.
3. Provision of state agency services in the general geographical area of residence of people in the most critical conditions of poverty.

<sup>1</sup> *State of California Program Support and Local Assistance Budget for the Fiscal Year July 1, 1969 to June 30, 1970.*



4. Provision of direct state and local services at the center to families and individuals on a coordinated basis through the use of functional teams rather than each agency working in terms of its own specialized area of interest. The exception is when the services of only one agency is required in a particular case.
5. Assignment of increased responsibility to the participating agencies for determining the extent, kind, and quality of services needed by persons being assisted, and for the coordination, continuity, and follow-up on required services. There is to be a regular feedback from the client on the services which have been provided. A central unified follow-up system will make certain that each client's needs, whether as an individual or as a family, are met to the greatest extent possible.
6. Extension of special efforts within the community to improve the knowledge of available services.
7. Involvement, to the extent possible, of members of the community area being served in identifying the needs to be met and relating these needs to available services. This serves the purpose of reducing the isolation of the disadvantaged from their government and community and improving their confidence in government at all levels.

The Service Center Program was instituted by an executive order. To effect the operation and administration of the program, the following components were described in the state budget for the fiscal year 1967-68:

#### 1. Executive

*Personnel:* The Director of the Service Center Program, and his staff within the Governor's office.

*Responsibilities:* Overall planning, coordination, direction, evaluation and training of the executive element. (The initial duties included selection of personnel, program planning and policy development, leasing premises and purchasing equipment, developing community support, understanding and cooperation and developing the most effective working relationships possible among the various state departments involved in the program.)

#### 2. Service Center Management

*Personnel:* Manager and assistant manager, staff of counselors, sub-professional aides, trainees, and clerical aides.

##### *Responsibilities:*

A. Coordination and Supervision: Coordinating both state and non-state functions and supervision of state personnel, maintaining community support and cooperation, and reception (intake) functions. (In the East and South Central Los Angeles Centers there are two assistant managers, one of whom is responsible for coordinating employment, rehabilitation and welfare services with other available services.)

B. Reception (Intake): The initial reception of the client, including an interview, a determination of his primary needs which can be met at the center through use of the resources of a special-



ized agency alone or by a functional team representing various resources available at or arranged by the service center, case follow-up.

### 3. Rehabilitation

*Personnel:* The counselor assumes complete responsibility for identifying related needs and problems of the referred client, and for securing remedial services for him. Sub-professional aides, indigenous to the community, work with the counselor and the client.

*Responsibilities:* When a client evidences a need, develop a plan for rehabilitation services, which may include diagnosis, physical restoration, vocational training (in workshops, on-the-job, trade, business, or public schools, colleges, universities), maintenance, transportation, books and supplies, tools, equipment, licenses, and assistance with job placement.

### 4. Employment

*Personnel:* (Similar to Rehabilitation)

*Responsibilities:* Intensive placement and job development services for residents of the area served by a particular center, employer contact programs to increase job opportunities, and to establish realistic hiring specifications in terms of job performance requirements rather than educational achievements when the latter is not a crucial factor.

Each of the following liaison agencies consist of one consultant.

#### 1. Social Welfare

*Responsibilities:* Liaison with, and encourage and facilitate participation by local public and private welfare agencies in the center area; special assistance on complex welfare problems not within the purview of other program elements in the center; develop child welfare protective units operated by the county and located in the center.

#### 2. Public Health

*Responsibilities:* Leadership in coordinating the volunteer and governmental resources available to help meet the health needs of the residents in the area served by the center; general health counseling; arranging health services for clients of the center; working with local agencies to improve accessible health services.

#### 3. Corrections and Youth Authority

*Responsibilities:* Perform liaison functions with parole and probation agencies, law enforcement, and the courts.

#### 4. Fair Employment Practices

*Responsibilities:* Assist clients by helping them overcome employment difficulties because of race, religious creed, or national origin.

#### 5. Apprenticeship Standards

*Responsibilities:* Enroll clients in apprenticeship programs and provide information to potential apprentices, including M.D.T.A. on-the-job training programs.

#### 6. Mental Health

*Responsibilities:* Advise the centers of services available to the mentally ill, and coordinate the services provided by governmental and non-governmental organizations within the center area.

### **Non-State Agencies**

In addition to coordinating and integrating state services, the Service Center Program extends its effectiveness through cooperation with federal and local governmental agencies and public and private community-based organizations. Increased participation by organizations, such as school districts, law enforcement agencies, county welfare and health departments, private social service agencies, community action projects, Social Security Administration, federal housing and development, business and civic organizations, is encouraged and sought.

As a result of state legislation enacted during the 1968 General Session (AB 1463, Chapter 1460 HRD Act of 1968), the Service Center Program and three other state agencies will be reorganized into the Department of Human Resources Development. This reorganization must be operative no later than January 1, 1970.

### **B. Eligibility**

The services available through a center can be obtained by any impoverished California resident. However, in order for an applicant or client of a service center to be assigned to a program where there is federal participation in grant payments, the eligibility requirements of that particular program must be met.

### **C. Benefits**

The services afforded are numerous, as can be readily discerned from examining the participating components. The programs that can be offered to disadvantaged persons in areas of intense poverty embrace practically all governmental and non-governmental services designed to assist the poor who are uneducated, unskilled, unemployed, underemployed, diseased, disabled, handicapped or aged.

The addendum to the 1966-67 Budget emphasized direct assistance given to applicants through individual or family evaluation at intake which is continued after assignment as a client. It reads:

"Community aides will follow through to determine that another agency has accepted responsibility for services and follow up on the case. Through reports and personal contacts by the community aide, the Intake Unit (Reception) will maintain sufficient contact with the case to determine whether services are being provided in a meaningful way. If at any point in the processing services, a program does not get under way as planned, or if it fails, the aide will encourage the applicant (client) to turn to the intake or evaluation units for a re-determination of needs in an attempt to locate other services which might help solve the problem."

### **V. Funding**

As the program was created by Executive Order, it receives its support principally from the state General Fund.

A three-year federal grant partly funded the intake elements of the Service Center Program as it related to "outreach" and related activities. This federal funding terminates June 30, 1970, and the 35 staff positions thereafter will be supported by the state.

The outside agencies, such as local government and nonprofit groups, maintaining personnel within the center pay for the space occupied, their personnel, and services as do state agency elements.

## VI. Statistics

### A. Total Expenditures for Service Center Program

(in thousands of dollars)

	Fiscal years	
	1966-67	1967-68
1. Total expenditures.....	6,387	7,608
2. Administrative expenditures.....	1,092	1,298
3. Direct program costs (case services costs).....	5,295	6,310

### B. Sources of Funds for Service Center Program

	Fiscal years	
	1966-67	1967-68
1. Total expenditures		
Federal.....	3,368	3,893
State.....	3,019	3,715
2. Administrative expenditures		
Federal.....	1,092	1,298
State.....		
3. Direct program costs		
Federal.....	3,368	3,892
State.....	1,927	2,418

### C. Client Count of Service Center Program

	Fiscal years	
	1966-67*	1967-68
1. Average monthly client count.....	30,686	52,022
2. Average daily intake.....	261	184
3. Average daily traffic.....	714	731
4. Client count end of fiscal year (June 30).....	37,058	36,228

\* Statistics for period of January to June 1967 only.

## ECONOMIC OPPORTUNITY ACT PROGRAMS

### A. GENERAL

#### I. General Description

The Economic Opportunity Act (EOA) of 1964 stated that it is:

“... the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to every-

one the opportunity for education and training, the opportunity to work and the opportunity to live in decency and dignity.”<sup>1</sup>

In 1966, PL 89-795 added to the EOA a stipulation that it was highly desirable to employ the resources of the private sector in furthering the policy.

## **II. Program Background**

The Economic Opportunity Act of 1964 (PL 88-452) was divided into seven titles. Title I concentrated on underprivileged youth and established:

1. The Job Corps program to aid those school dropouts who would benefit from a change in environment;
2. The work-training program to give occupational training to youths in their own communities;
3. The work-study program which obtained part-time jobs to aid those students who have reached college but whose families have no financial means to help them.

Title II created Urban and Rural Community Action Programs and called for, among other things, local adult education programs and an office to help volunteers locate and give financial assistance to needy children. Title III authorized programs to raise the income and living standards of low-income rural families and migrant workers. Title IV authorized the director to make or guarantee loans, repayable in 15 years, to establish and strengthen small businesses and to help them employ the long-term unemployed. Title V authorized the director to transfer appropriated funds to the Secretary of Health, Education, and Welfare for pilot projects to employ and train heads of families receiving help under the Aid to Families with Dependent Children program. Title VI established the Office of Economic Opportunity (OEO) in the Executive Office of the President and provided that the director of the program be appointed by the President and confirmed by the Senate. Title VI also authorized the director to recruit, select, and train the Volunteers in Service to America (the “Domestic Peace Corps”). Title VII established the policy that an individual’s opportunity to participate in certain programs under this act would neither jeopardize, nor be jeopardized by, his receipt of public assistance.

In early 1964 the Governor appointed a Special Assistant for Anti-Poverty Planning, who became the Director of the California Office of Economic Opportunity (COEO) created by Executive Order later that year. The COEO took over responsibility for statewide direction of the “War on Poverty” in California. The first federal EOA funds awarded to the State of California amounted to \$437,000 and were received on December 22, 1964. Since that date numerous types of programs have been instituted, some of which are outside the scope of the definition of this study.

## **III. Federal Requirements**

All programs funded under the EOA are, as a result of the passage of PL 89-794 in 1966, prohibited from using federal funds or personnel for political activities. PL 90-222 (1967) broadened this restriction to

<sup>1</sup> PL 88-452, Findings and Declaration of Purpose.



include registration of voters and assisting voters to come to the polls. The latter law also prohibits continued participation or employment in an EOA program of any person planning, assisting, inciting or participating in any unlawful demonstration, riot, or civil disturbance. Each title and/or subtitle of the act also contains requirements regarding programs funded under it.

#### IV. State Implementation

Among the responsibilities of the California Office of Economic Opportunity are the following:

1. Evaluating the feasibility, desirability and legality of proposed programs;
2. Encouraging the development and coordination of programs;
3. Providing technical assistance to programs (*e.g.*, demonstrating the effective use of sub-professionals recruited from the poor);
4. Coordinating state, local and federal resources available to programs;
5. Reviewing and evaluating the operation of programs;
6. Designing and administering a statewide program in behalf of migratory farm workers and their families;
7. Operating various pilot and/or regional projects, often in co-operation with local agencies;
8. Advising the Governor of the implementation of the Federal Economic Opportunity Act within the state.

Literally hundreds of programs are operated by public and nonprofit private agencies under the direction of the California Office of Economic Opportunity.

#### V. Funding

The proportion of federal funding for programs under the EOA depends on the title under which they are funded.

Funding provisions for programs included in this report are described in the following program descriptions.

### THE JOB CORPS AND NEIGHBORHOOD YOUTH CORPS

(Title I, EOA)

#### I. General Description

Title I of the federal Economic Opportunity Act authorizes the development of two types of work-training programs. Title IA provides for the creation of a Job Corps:

“ . . . to assist young persons who need and can benefit from an unusually intensive program . . . of education, vocational education, work experience, counseling, and other activities . . . to become more responsible, employable, and productive citizens . . . ”<sup>1</sup>

Title IB provides for institution of programs designed to:

“ . . . provide useful work and training . . . that will assist low-income youths to continue or resume their education, and to help

<sup>1</sup> Public Law 88-452, Title IA.



unemployed or low-income persons . . . to obtain and hold regular employment."<sup>2</sup>

Under Title I, creation of the Neighborhood Youth Corps is authorized:

" . . . to provide . . . low income unemployed youth . . . meaningful work-experience, training, and necessary supportive services . . . which will provide them to maintain or resume attendance in school and/or assist them to develop their maximum occupational potential."<sup>3</sup>

## II. Program Background

In 1964 Congress enacted PL 88-452, an omnibus poverty bill called "The Economic Opportunity Act." The act established the Office of Economic Opportunity in the Executive Office of the President to direct and coordinate the diverse activities included under the act. The Governor, by executive order, created the California Office of Economic Opportunity to take responsibility for statewide direction of the newly instituted "War on Poverty."

## III. Federal Requirements

*Title IA.* The 1964 Economic Opportunity Act provided that agencies operating Job Corps centers accept as enrollees only permanent residents of the U. S. who were 16 to 21 years of age and either living on a low income or in a low-income family. Enrollees were also required to take a loyalty oath and sign an affidavit disclaiming membership in subversive organizations. A 1965 amendment designated Cuban refugees as permanent residents for purposes of the act; and in 1967 amendments were adopted lowering the age requirement to 14 and stipulating that enrollees must be:

1. Living under disoriented conditions which substantially impair prospects for participation in other programs;
2. Physically and mentally capable of taking full advantage of the program;
3. Eligible under any other standards prescribed by the Director of the Federal Office of Economic Opportunity.

The 1967 amendments prohibited agencies from making payments to anyone for referring prospective enrollees to the program.

*Title IB.* The public or private agencies which are approved by the director of the federal OEO as sponsors of programs (including Neighborhood Youth Corps) under this section are required to conduct a program which:

1. Involves participation of employers and labor organizations in program planning and conduct;
2. Meets administrative, accounting, personnel and evaluative requirements set by the Director of the U.S. Office of Economic Opportunity;

<sup>2</sup> *Ibid.*, Title IB.

<sup>3</sup> U.S. Department of Labor, *Handbook for Sponsors: Standards and Procedures for Work-Training Experience Programs Under the Economic Opportunity Act of 1964, as Amended*. Washington, D.C.: The U.S. Government Printing Office, 1967, p. 1-12.

3. Conforms with Section 124(a)(1)—“No participant will be employed on projects involving political parties or construction operation or maintenance . . . of any facility . . . used for . . . religious worship.” This does not mean that religious organizations are barred as delegate agencies for purposes of the act;
4. Insures that no displacement of other employed workers or substitution of federal for other funds will result;
5. Provides “appropriate” rates of pay;
6. Provides maximum feasible contributions to occupational development or upward mobility of participants;
7. Makes use, if practicable, of public and private delegate agencies to carry out appropriate parts of the program;
8. Is consolidated (since July 1, 1968) under a single “prime sponsor” for such programs in a community;
9. Terminates a grant if any employee charged in whole or part with its administration is a member of the Communist Party;
10. Provides coordination, when possible, with local public education programs.

Federal regulations provide specific requirements governing eligibility for participation in the Neighborhood Youth Corps. Participants who are *in school* must be:

1. Either attending grades nine through 12 or of the same age as persons attending those grades in order that they may continue in school.
2. A member of a low-income family.

Participants in NYC programs for those *out of school* must have no intention of returning to school and be:

1. Unemployed;
2. 16 to 21 years of age;
3. A member of a low-income family.

#### IV. State Implementation

The director of the federal OEO authorizes public (including state) and private agencies to operate Job Corps centers, and the Administrator of the Bureau of Work Programs in the U.S. Department of Labor performs the same function with regard to prospective Neighborhood Youth Corps programs. An application for the operation of one of these programs is submitted to the Governor, who may veto it within 30 days after it has been submitted to him. Approval of an application vetoed by the Governor can be made by the Federal OEO Director only after his review.

The California Office of Economic Opportunity is empowered to provide technical assistance and training, coordination of programs within the state and operation of state projects, including those in state agencies.

Eligibility standards for participation in the Job Corps or Neighborhood Youth Corps are established by federal law and/or regulation.

## V. Funding

The federal government reimburses agencies up to 90 percent of the cost of operating Job Corps centers and Neighborhood Youth Corps. The non-federal contribution may be in either cash or kind (*e.g.*, plant, equipment, services). In some instances, the 10 percent local contribution may be waived in part.

# URBAN AND RURAL COMMUNITY ACTION PROGRAMS

(Title II, EOA)

## I. General Description

The purpose of Community Action Programs (CAP) is the:

“ . . . focusing of all available state, private, and federal resources upon the goal of enabling low-income families and low-income individuals of all ages, in rural and urban areas, to . . . become self-sufficient.”<sup>1</sup>

## II. Program Background

In 1964 Congress enacted an omnibus poverty bill called “The Economic Opportunity Act” (PL 88-452). Title II of the act provided for the development of Community Action Programs. The EOA established the Office of Economic Opportunity in the Executive Office of the President to authorize, direct, and coordinate activities under the act. Two specific Community Action Programs for work-training experience were added to Title II later and were placed under the supervision of the U. S. Department of Labor. These were Operation Mainstream, authorized by Congress in 1965, and the New Careers Programs, authorized by Congress in 1966.

## III. Federal Requirements

In addition to meeting the general requirements applicable to agencies participating under any section of the EOA, Community Action agencies are required by law to:

1. Systematically plan for and evaluate the CAP;
2. Encourage related agencies to plan for, secure and administer assistance under this title (II) to close service gaps;
3. Initiate or sponsor projects responsive to needs of the poor not otherwise being met with particular emphasis on central or common services drawn from a variety of related programs;
4. Establish procedures by which the poor and area residents can influence the character of programs affecting their interest;
5. Join with and encourage business, labor and other private groups to undertake, jointly, programs increasing employability, investment, etc.

Each community action agency is also required to:

1. Enter into contracts with public or private, nonprofit agencies to carry out its program;

<sup>1</sup> Public Law 88-452, Title II.

2. Conform to reasonable criteria for operation established by the Director of OEO;
3. Adopt (as of July 1, 1968) a systematic approach toward achievement of stated purposes;
4. Produce a major impact on offsetting the causes of poverty;
5. Administer the program through a governing board of 51 or less persons, one-third of whom are public officials and two-thirds of whom are representative of major groups and interests within the community (at least one-half of the latter group must be democratically selected to insure representation of the poor within the area to be served);
6. Provide procedures whereby community agencies and representatives of the poor can petition for greater representation on the governing board;
7. Provide reasonable public access to its records;
8. Adopt regulations to prevent conflicts of interest, nepotism, promotion of politically partisan interests and involvement of agency personnel in illegal picketing or other direct action as part of their duties;
9. Encourage establishment of organizations for housing development and services;
10. Promote cooperative efforts with all pertinent public and private agencies.

#### **IV. State Implementation**

The Governor established the California Office of Economic Opportunity (COEO) in 1964 to take responsibility for the statewide direction of the newly instituted "War on Poverty." Community, regional, or statewide community action agencies are designated by Federal OEO to institute Community Action Programs. Applications for establishment of such programs must be submitted to the Governor before being approved. If the Governor expresses disapproval within 30 days, only the Director of the United States Office of Economic Opportunity can, after reconsidering the application, approve it over the Governor's veto.

State, local and private nonprofit (including cooperative) agencies and institutions may be authorized to carry out Community Action Programs under Title II. A program which is funded under Title I but administered as a Community Action Program is the Foster Grandparents Program. This type of program employs elderly poor persons to care for poor or institutionalized children on a part-time basis. For purposes of this study, it is classified as a "Training and Rehabilitation" program.

The types of Community Action Programs established in California, a brief description of each, qualifications for participation and classification, in terms of this study, are found in the following charts:



## BENEFITS AND/OR SERVICES OF COMMUNITY ACTION PROGRAMS IN CALIFORNIA

Program	Classification	Eligibility	Benefits and/or services
Job Development, Placement, and Follow-Up	Training and Rehabilitation	Poor persons	Finding new job openings, including stimulation and creation of new jobs, further improvement of existing jobs. Efforts to restructure hiring criteria, facilitate labor mobility, and provide fuller employment. Includes job development associated with OJT contracts. Placing individuals in appropriate jobs. Counseling individuals, usually for a minimum of 3 months, after they are placed.
Manpower Program Intake, Assessment, and Placement	Training and Rehabilitation	Poor persons	Measuring individual aptitudes, needs and interests to determine current and potential skill levels. Placement in training or employment as a result of the assessment.
Prevocational and Vocational Training	Training and Rehabilitation	Poor persons	Training to prepare a person for employment or vocational training. Specific skill training to prepare for the competitive labor market.
Senior Opportunities and Services	Training and Rehabilitation	Poor persons over 55 years of age	Provision of employment and volunteer services. Referral to existing programs. Provision of client-controlled recreational and service centers. Other appropriate programs.
General Services	Training and Rehabilitation	Poor persons	Home management instruction.
		Families needing aid to keep functioning	Homemakers services.
		Poor persons	Food distribution and production. Bail-bond and other projects related to legal services.
Operation Mainstream	Training and Rehabilitation	Poor persons over 21 who are chronically or repeatedly unemployed or under-employed	Meaningful work experience and training in activities which improve the social and physical environment of the community.
New Careers	Training and Rehabilitation	Unemployed, over 21, with family income below the poverty line	Work-training employment designed to improve the community and prepare participants for continuing employment—particularly in public service jobs. Breaks down traditional jobs into functions that can be filled by poorly educated low-income persons at the entry level with career ladders incorporated in the job.
Adult Education (In 1966 authorization for Adult Educ. was transferred to Title IV of the Elem. & Secun. Educ. Act)*	Training and Rehabilitation	Adults with non-English native language	English as a second language, mathematics, how to read newspapers and manuals.
		Illiterate adults	Adult Basic Education providing basic literacy training.
Comprehensive Health Services	Subsistence	Poor persons	Comprehensive Health Services projects (Neighborhood Health Centers) with preventive, diagnostic, rehabilitative, education, outreach, training and other services.
Medical Care	Subsistence	Poor persons	Community health projects with diagnosis and treatment of illness and disability, including follow-up in case-finding activities (e.g., Head Start).
Dental Health	Subsistence	Poor persons	Community health projects providing examination, preventive, curative and follow-up services.
Mental Health Care	Subsistence	Poor persons	Community health projects involving examination, consultative, preventive, curative and follow-up services.
Family Planning	Subsistence	Poor persons	Community health projects involving education, counseling, examinations, supplies, and instruction in family planning.
Emergency Financial Assistance	Subsistence	Poor individuals and families with urgent immediate financial need	Financial assistance for needs other than food and medical services (e.g., housing, clothing, and employment-related needs).



## BENEFITS AND/OR SERVICES OF COMMUNITY ACTION PROGRAMS IN CALIFORNIA

(Continued)

Program	Classification	Eligibility	Benefits and/or services
Emergency Food and Medical Services	Subsistence	Poor persons in need of emergency, temporary aid	Provision of basic foodstuffs and medical services necessary to counteract starvation or malnutrition. Enrollment of eligible person in Food Stamp, Commodity Distribution or other local school programs.
School Age Education	Protective Services	Poor, school age children	Guidance, testing and counseling, tutorial and remedial education, cultural enrichment, curriculum and faculty development, and other school age programs.
Legal Services	Protective Services	Poor persons	Legal advice, representation and education. Advocacy of reforms in the legal system, neighborhood courts, arbitration and other reform projects.
Day Care	Protective Services	Children	Day care services meeting federal interagency requirements. <sup>1</sup>
Head Start—Full Year	Protective Services	Children, aged 3-6, but some younger and older children permitted	Comprehensive child development programs. Includes both part day (up to 6 hours) and full day (more than six hours) programs.
Summer Head Start	Protective Services	Children beginning school in fall	Comprehensive child development programs of a minimum aggregate of 120 hours.
Parent and Child Centers	Protective Services	Disadvantaged families with at least 1 child under 3 years old	Comprehensive child development programs emphasizing reinforcement of parental skills and involvement with their children.

\* See *Adult Basic Education*.<sup>1</sup> See *Day Care Programs*.**V. Funding**

Until July 1, 1968, the federal government paid up to 90 percent of the cost of Community Action Programs. Since that time, the federal share has dropped to 80 percent. The non-federal share is provided by the local agency and may be either cash or "in kind" (*e.g.*, facilities or labor).

A portion of the money appropriated by the federal government is allotted to a state in accordance with a formula based on the state's relative position to the other states with respect to the following criteria developed by the director under general authority of the EOA:

1. The number of public assistance recipients;
2. The average number of unemployed persons;
3. The number of children in families with annual incomes of less than \$1,000.

## MIGRANT PROGRAMS (TITLE III B OF THE ECONOMIC OPPORTUNITY ACT)

**I. General Description**

The purpose of programs instituted under Title III B of the Economic Opportunity Act (EOA) is:

"... to assist migrant and seasonal farm workers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life. . ."<sup>1</sup>

<sup>1</sup> Public Law 88-452, Title III B.

## II. Background

In 1964 Congress enacted an omnibus poverty bill called "The Economic Opportunity Act" (PL 88-452). Title III of the act provided for the development of special programs to combat poverty in rural areas, including assistance for migrant and other seasonally employed farm workers and their families under Title III B. The EOA established the Office of Economic Opportunity in the Executive Office of the President to authorize, direct, and coordinate activities under the act.

## III. Federal Requirements

In addition to meeting the general requirements applicable to agencies participating under any section of the EOA, agencies developed and/or funded under Title III B of the act may provide:

1. Services such as day care, education, health, housing, sanitation, legal aid, and consumer education;
2. Activities to increase community acceptance of migrant and seasonal farm workers;
3. Programs to increase the skill level of farm workers through participation in training programs.

In 1966 Congress extended the authorization for Title III programs through June 30, 1970; however, in early 1968, federal financial participation in off-season maintenance of housing for migrant programs was discontinued.

## IV. State Implementation

The Governor established the California Office of Economic Opportunity (COEO) in 1964 to take responsibility for statewide direction of the newly instituted "War on Poverty"—including the California Migrant Master Plan.

Early studies leading to the adoption of the Master Plan included the *Report of the Governor's Advisory Commission on Housing Problems* in 1963 and a research project conducted from November 1963 through July 1965 by the Farm Workers Health Service, State Department of Public Health. Under the plan, the Migrant Section of the California OEO helps to coordinate a wide variety of activities authorized and funded not only under the OEA, but also under the Elementary and Secondary Education Act, the federal Public Health Service Act, the federal Social Security Act and state legislation.

The COEO is authorized to provide technical assistance and training and operation of state projects.

Under Title III B of the EOA, state, local, and private nonprofit (including cooperative) agencies and institutions may be authorized to carry out programs to assist migrants and their families. All 21 migrant centers in California are, however, operated by public agencies. The centers provide four broad categories of service in a coordinated setting: housing, day care, education and health. No additional construction of housing was provided during fiscal year 1968-69 due to deletion of federal funds for off-season maintenance of such facilities.

## V. Funding

All costs of capital outlay for migrant centers are provided by the federal government, including construction costs of day care facilities in the centers. The local contribution can be in kind (*e.g.*, land, labor, services) or cash. The federal government also provides 90 percent of administrative and operational costs, but the state pays the remaining 10 percent.

As of May 15, 1968, the Migrant Master Plan administration of the California OEO, in response to federal OEO funding restrictions, gave funding priority to migrant housing and ceased funding day care programs. From May 15 to August 30, 1968, the Office of Compensatory Education provided funds available through the Federal Elementary and Secondary Education Act (ESEA) to provide a daily four-hour educational component for the migrant day care facilities. The remainder of the funding was provided by the California OEO from rental income.

From September 1 to November 15, 1968, the Migrant Master Plan administration (COEO) provided 25 percent of the funds from its General Fund appropriation, and the remainder was obtained from the State Department of Social Welfare from funds available under Title IV B of the federal Social Security Act, which contains provisions for extending certain services to potential AFDC families. The COEO and Department of Social Welfare contracted with the Office of Compensatory Education to provide consultant services to the day care programs. In fiscal year 1969-70, the Department of Social Welfare has proposed to continue using state-federal funds available under the FSSA to support the program, and the Office of Compensatory Education has proposed to continue its activities as funded under ESEA.

## WORK EXPERIENCE, TRAINING, AND DAY CARE PROGRAMS (TITLE V OF THE ECONOMIC OPPORTUNITY ACT)

### I. General Description

There were two major parts in Title V of the EOA Part A provides for work experience and training programs. Part B relates to day care projects. The purpose of Part B is:

“ . . . to provide day care for children from families which need such assistance to become or remain self-sufficient . . . ”<sup>1</sup>

Title V A is designed:

“ . . . to expand the opportunities for constructive work experience and other needed training available to persons (including workers from farm families with less than \$1,200 net family income, unemployed heads of families and other needy persons) who are unable to support themselves and their families.”<sup>2</sup>

<sup>1</sup> Public Law 88-452, Title V B.

<sup>2</sup> *Ibid.*, Title V A.

## II. Program Background

In 1962 Congress amended the federal Social Security Act to provide for federal participation in statewide community work and training projects for recipients of public assistance. The following year the California State Legislature enacted legislation effective February 1, 1964, requiring each county to establish a community work experience and vocational training program designed to aid public assistance recipients to become self-sufficient. This program was supplemented in some counties as a result of the passage of the Economic Opportunity Act of 1964.

In 1964 Congress enacted an omnibus poverty bill called "The Economic Opportunity Act" (PL 88-452). Title V of the act authorized the director of the newly created Office of Economic Opportunity (OEO) to transfer funds to the Secretary of Health, Education, and Welfare for support of experimental, pilot and demonstration projects aimed at helping unemployed fathers and other needy persons to become self-supporting. In 1966 Congress amended the EOA, adding Part V B which authorized expenditure of funds for day care necessary as a supportive service in allowing needy parents to work toward self-sufficiency. The 1967 amendments to the federal Social Security Act provide for replacement of programs under Title V of the EOA with a new "Work Incentive Program."

## III. Federal Requirements

As originally passed in 1964, the EOA required that, in carrying out the purposes of Title V, maximum use be made of the Manpower Development and Training Program. This requirement was eliminated by Congress in 1966. Other requirements of the act, as amended to include day care under Title V B, were that:

1. Services be provided to recipients of public assistance (*i.e.*, OAS, AFDC, AB, ATD, and MAP);
2. Any participant be limited to a maximum participation time of 36 months, exclusive of follow-up services;
3. Each program conduct periodic evaluations of its efforts.

In addition, agencies participating under Title V were obligated to conform to those general requirements which applied to all parts of the EOA.

## IV. State Implementation

County welfare departments who wished to supplement their regular community work and training programs through participation under Title V of the EOA, submitted plans to the State Department of Social Welfare for approval. After state approval was secured, the U. S. Department of Health, Education, and Welfare had to approve the county program and distribute the Title V funds. Welfare departments were permitted to contract with private and public agencies for training purposes; however, state law prohibited participants in the program from being employed in any activity as a replacement or substitute for any regular worker.

Work experience and training under Title V was provided to recipients of public assistance, including unemployed AFDC fathers who had



not previously been eligible for similar federally aided programs, and to "hard core" unemployed persons who were not necessarily recipients of public assistance. The program provided a participant with screening, counseling, training, and job placement, as well as meeting full need of the family and actual costs of supportive elements such as transportation, child care (*i.e.*, day care), uniforms, materials, and tools. Some Title V funds were used to establish day care facilities (four in Los Angeles County, two in Ventura County) where participants were trained and employed and where children of participants received care while their parents were occupied in the program.

In 1967 Congress amended the federal Social Security Act to provide for the institution of the Work Incentive Program which was intended to unify and/or replace Title V and other similar programs.<sup>3</sup> With the exception of the Inland Empire Project in San Bernardino and Riverside Counties, all programs under Title V of the Economic Opportunity Act were phased out by August 31, 1968. The remaining project was phased out on January 31, 1969, and the last remaining element of Title V, a small administrative detail in the State Department of Social Welfare, completed its work on March 31, 1969.

## **V. Funding**

The work experience and training projects authorized under Title V of the EOA were funded 100 percent by the federal government. A portion of the funds provided for county projects was allocated for administrative costs of the State Department of Social Welfare.

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<sup>3</sup> See *Work Incentive Program*.



## VI. Statistics

**A. Total Expenditures for Selected Economic Opportunity Act (EOA) Programs**

(in thousands of dollars)

	Fiscal years			
	1964-65	1965-66	1966-67	1967-68
1. Total expenditures.....	13,632	60,558	125,828	100,024
a. Administrative expenditures by state OEO.....	90	562	*558	*694
b. Total program expenditures.....	13,542	59,996	125,270	99,330
1. By selected programs <sup>a</sup>				
1. Job Corps.....		n.a.	29,481	25,663
2. Neighborhood Youth Corps <sup>b</sup> .....		18,350	30,775	20,835
3. Selected Community Action Programs.....	8,750	34,401	52,390	43,345
4. New Careers <sup>b</sup> .....			797	1,000
5. Operation Mainstream <sup>b</sup> .....			1,722	770
6. Migrant Programs.....	4,430	3,201	3,807	2,419
7. Title V, EOA-Work Experience Program.....	362	4,044	6,298	5,298
II. Functional direct program expenditure groupings				
1. Support/maintenance expenditures.....	2,704	3,466	17,665	17,212
Support/maintenance.....	2,329	3,260	9,952	10,708
Medical care/services.....	375	206	7,713	6,504
2. Training/rehabilitation expenditures.....	9,386	40,654	59,976	45,522
Placement/training.....	745	23,191	38,510	29,869
Case services.....	671	7,044	12,047	10,823
Instruction.....	7,970	10,419	9,419	4,830
3. Protective services expenditures.....	1,419	15,572	35,163	27,499
Protective services.....	1,419	15,572	35,163	27,499
2. Total program administrative expenditures.....	33	304	12,466	9,097
a. Job Corps.....		n.a.	9,691	9,039
b. Work Experience Program—Title V—EOA (Not available for other programs).....	33	304	2,775	58
3. Total direct program expenditures.....	13,509	59,692	112,804	90,233
a. Job Corps.....		n.a.	19,790	16,624
Support/maintenance.....		n.a.	4,143	3,796
Medical care/services.....		n.a.	1,704	1,424
Stipends.....		n.a.	4,394	3,884
Case services.....		n.a.	9,549	7,520
b. Neighborhood Youth Corps.....		18,350	30,775	20,835
Placement/training.....		18,350	30,775	20,835
c. Community Action Programs.....	8,750	34,401	52,390	43,345
Support/maintenance.....	181	863	589	1,806
Medical care/services.....	375	206	6,009	5,080
Placement/training.....	416	1,101	1,693	2,192
Case services.....	671	7,044	2,498	3,135
Instruction.....	5,688	9,952	7,263	3,733
Protective services.....	1,419	15,235	34,338	27,399
d. New Careers.....			797	1,000
Placement/training.....			797	1,000
e. Operation Mainstream.....			1,722	770
Placement/training.....			1,722	770

**VI. Statistics—Continued****A. Total Expenditures for Selected Economic Opportunity Act (EOA) Programs**

(in thousands of dollars)

	Fiscal years			
	1964-65	1965-66	1966-67	1967-68
<i>f.</i> Migrant Programs.....	4,430	3,201	3,807	2,419
Support/maintenance.....	2,148	2,397	826	1,222
Instruction.....	2,282	467	2,156	1,097
Protective services.....		337	825	100
<i>g.</i> Work Experience Program.....	329	3,740	3,523	5,240
Case services.....	n.a.	n.a.	n.a.	168
Placement/training.....	329	3,740	3,523	5,072

\* Includes General Fund Expenditures for Migrant Master Plan, fiscal year 1967—\$11,764 and fiscal year 1968—\$202,922.

† Includes administrative expenditures.

‡ Represents obligated federal funds, actual expenditures not available.

n.a. Not available.

**B. Sources of Funds for Selected Economic Opportunity Act (EOA) Programs**

(in thousands of dollars)

	Fiscal years			
	1964-65	1965-66	1966-67	1967-68
1. Total expenditures, federal.....	13,542	59,996	125,270	99,330
2. State OEO administrative expenditures*				
Federal.....		506	500	460
State.....	90	56	58	234
3. Program administrative expenditures, federal.....	33	304	12,466	9,097
4. Direct program expenditures, federal.....	13,509	59,692	112,804	90,233

\* Not included in totals.

**C. Trainee Count Statistics for Selected Economic Opportunity Act (EOA) Programs**

	Fiscal years			
	1964-65	1965-66	1966-67	1967-68
1. Total number of enrollee/trainees/slots or participants				
<i>a.</i> Job Corps.....		n.a.	3,892	2,988
<i>b.</i> Neighborhood Youth Corps*.....		19,378	48,898	41,126
<i>c.</i> Selected Community Action Programs†.....	n.a.	n.a.	n.a.	n.a.
<i>d.</i> New Careers†.....			304	538
<i>e.</i> Operation Mainstream*.....			428	354
<i>f.</i> Migrant Programs.....	n.a.	n.a.	n.a.	n.a.

\* Slots under obligated federal funds.

† An unduplicated persons count from selected CAP programs is not available.

n.a. Not available.



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**Appendix A**  
**STATISTICAL SUMMARY**

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**Table I A**  
**EXPENDITURES FOR SUPPORT AND MAINTENANCE PROGRAMS**  
**Per Definitional Category (a) of This Report**  
**(in thousands of dollars)**

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>1. Old Age Security (OAS)</b>					
A. Total expenditures.....	*329,534	*341,672	*347,486	*376,915	*378,295
B. Administrative expenditures*.....	23,751	25,397	27,381	29,554	<sup>b</sup> 8,035
C. Direct program costs <sup>c</sup> .....	305,783	316,275	320,105	347,361	370,260
1. Case service costs.....	n.a.	n.a.	n.a.	n.a.	13,957
2. Subsistence payments.....	305,783	316,275	320,105	347,361	356,303
3. Medical care payments.....	↑	↑	↑		
<b>2. Aid to the Blind (AB) and Aid to the Potentially Self-Supporting Blind (APSB)</b>					
A. Total expenditures.....	*19,293	*19,653	*20,463	*21,432	*22,868
B. Administrative expenditures*.....	2,227	2,014	1,904	1,833	<sup>b</sup> 1,922
C. Direct program costs <sup>c</sup> .....	17,066	17,669	18,559	19,599	20,946
1. Case service costs.....	n.a.	n.a.	n.a.	n.a.	586
2. Subsistence payments.....	17,066	17,669	18,559	19,599	20,360
3. Medical care payments.....	↑	↑	↑		
<b>3. Aid to the Disabled (ATD)</b>					
A. Total expenditures.....	*54,943	*83,855	*117,934	*154,569	*198,683
B. Administrative expenditures*.....	8,403	12,833	16,710	21,989	<sup>b</sup> 8,259
C. Direct program costs <sup>c</sup> .....	46,540	71,022	101,224	132,580	190,424
1. Case service costs.....	n.a.	n.a.	n.a.	n.a.	23,283
2. Subsistence payments.....	46,540	71,022	101,224	132,580	167,141
3. Medical care payments.....	↑	↑	↑		
<b>4. Aid to Families with Dependent Children (AFDC)</b>					
A. Total expenditures.....	*263,563	*337,776	*404,738	*487,503	*566,359
B. Administrative expenditures*.....	40,756	56,838	69,295	85,982	<sup>b</sup> 22,484
C. Direct program costs <sup>c</sup> .....	222,807	280,938	335,443	401,521	543,875
1. Case service costs.....	n.a.	n.a.	n.a.	n.a.	89,261
2. Subsistence payments.....	222,807	280,938	335,443	401,521	454,614
3. Medical care payments.....	↑	↑	↑		
<b>5. Public Assistance Medical Care (PAMC)</b> <b>Medical Assistance for the Aged (MAA)</b> <b>California Medical Assistance Program (Medi-Cal)</b>					
A. Total expenditures.....	149,068	192,589	418,621	729,200	706,216
B. Administrative expenditures <sup>d</sup> .....	5,080	6,195	9,668	19,500	28,100
C. Direct program costs.....	143,988	186,394	408,953	709,700	678,116
1. Case service costs.....	n.a.	n.a.	n.a.	n.a.	n.a.
2. Subsistence payments.....					
3. Medical care payments.....	143,988	186,394	408,953	709,700	678,116
<b>6. General Relief and Other Welfare Programs</b>					
A. Total expenditures.....	31,955	24,951	25,061	30,767	33,593
B. Administrative expenditures.....	7,616	5,826	6,516	7,404	6,646
C. Direct program costs.....	24,339	19,125	18,545	23,363	26,947
1. Case service costs.....	n.a.	n.a.	n.a.	n.a.	n.a.
2. Subsistence payments.....	22,885	17,357	18,485	23,363	26,947
3. Medical care payments.....	1,454	1,768	60		
<b>7. Cuban Refugee Program</b>					
A. Total expenditures.....	377	443	458	1,203	2,224
B. Administrative expenditures.....					
C. Direct program costs.....	377	443	458	1,203	2,224
1. Case service costs.....					
2. Subsistence payments.....	377	443	458	1,203	2,224
3. Medical care payments.....					

**Table 1 A—Continued**  
**EXPENDITURES FOR SUPPORT AND MAINTENANCE PROGRAMS**  
 Per Definitional Category (a) of This Report  
 (in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>8. Repatriated U.S. Citizens Program</b>					
A. Total expenditures.....	6	5	12	20	27
B. Administrative expenditures.....					
C. Direct program costs.....	6	5	12	20	27
1. Case service costs.....					
2. Subsistence payments.....	6	5	12	20	27
3. Medical care payments.....					
<b>9. School Lunch Program—Free and Reduced Cost Portion</b>					
A. Total expenditures.....	2,366	3,702	2,047	3,266	3,910
B. Administrative expenditures <sup>a</sup> .....	192	196	214	218	231
C. Direct program costs.....	2,174	3,506	2,733	3,048	3,679
1. Case service costs <sup>f</sup> .....	n.a.	n.a.	n.a.	n.a.	n.a.
2. Subsistence payments.....	2,174	3,506	2,733	3,048	3,679
<b>10. Surplus Food Program—Donated Commodities</b>					
A. Total expenditures.....	1,735	2,230	1,731	2,263	3,840
B. Administrative expenditures.....	136	166	136	181	257
C. Direct program costs.....	1,599	2,064	1,595	2,082	3,583
1. Subsistence payments.....	1,599	2,064	1,595	2,082	3,583
<b>11. Food Stamp Program</b>					
A. Total expenditures <sup>g</sup> .....			1,957	6,124	11,756
B. Administrative expenditures.....			n.a.	n.a.	500
C. Direct program costs.....			1,957	6,124	11,256
1. Subsistence payments.....			1,957	6,124	11,256
<b>12. Support and Maintenance Program Expenditures in Selected OEO Programs (See OEO program statistics for breakdown of programs)</b>					
A. Total expenditures.....		2,704	3,466	17,665	17,212
B. Administrative expenditures.....		n.a.	n.a.	n.a.	n.a.
C. Direct program costs.....		2,704	3,466	17,665	17,212
1. Subsistence payments.....		2,329	3,260	9,952	10,708
2. Medical care payments.....		375	206	7,713	6,504
<b>13. Special Social Services and Other Projects</b>					
A. Total expenditures.....	1,961	3,385	2,855	2,624	1,267
B. Administrative expenditures.....	1,961	3,385	2,855	2,624	1,267
C. Direct program costs <sup>h</sup> .....					
<b>14. Unallocated Administrative Expenditures in Social Welfare</b>					
A. Total expenditures.....					2,778
B. Administrative expenditures.....					2,778
C. Direct program costs <sup>h</sup> .....					

\* Does not include expenditures for medical care assistance

† See statistics under Medi-Cal.

<sup>a</sup> Includes county case service costs from fiscal years 1963-64 to 1966-67.

<sup>b</sup> Does not include unallocated special departmental programs.

<sup>c</sup> For fiscal years 1963-64 to 1966-67, county case service costs are not separable from county program administrative expenditures.

<sup>d</sup> Includes administrative expenditures for Medi-Cal and MAA; PAMC administrative expenditures included in respective categorical aid programs.

<sup>e</sup> Includes only state administrative expenditures.

<sup>f</sup> Local administrative expenditures included in assistance expenditures.

<sup>g</sup> Equals value of Federal Bonus Stamps above cash paid for coupons.

<sup>h</sup> Direct program costs are functionally considered as administrative expenditures.

n.a. Not available.

**Definitions:**

Administrative Expenditures: Includes both state and county program expenditures, where applicable.

Direct Program Costs: All service and payments expenditures, excluding state or county administrative expenditures.

**Table I B**  
**SOURCES OF FUNDS FOR SUPPORT AND MAINTENANCE PROGRAMS**  
(in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>1. Old Age Security—OAS</b>					
A. Total expenditures.....	329,534	341,672	347,487	376,915	378,295
Federal.....	151,058	154,625	165,631	189,421	190,914
State.....	144,506	151,384	146,449	151,103	153,478
County.....	33,970	35,663	35,407	36,391	33,903
B. Total administrative expenditures*.....	23,751	25,397	27,381	29,554	21,992
Federal.....	13,268	14,326	15,685	17,142	12,784
State.....	514	548	598	537	703
County.....	9,969	10,523	11,098	11,875	8,505
C. Subsistence expenditures.....	305,783	316,275	320,106	347,361	356,303
Federal.....	137,790	140,299	149,946	172,279	178,130
State.....	143,992	150,836	145,851	150,566	152,775
County.....	24,001	25,140	24,309	24,516	25,398
<b>2. Aid to the Blind (AB) and Aid to the Potentially Self-Supporting Blind (APSB)</b>					
A. Total expenditures.....	19,293	19,683	20,463	21,432	22,868
Federal.....	7,531	7,446	8,935	10,133	11,451
State.....	8,270	8,668	8,181	8,031	7,829
County.....	3,492	3,569	3,347	3,268	3,588
B. Total administrative expenditures*.....	2,227	2,014	1,904	1,833	2,508
Federal.....	1,245	1,125	1,086	1,047	1,439
State.....	172	138	138	111	44
County.....	810	751	680	675	1,025
C. Subsistence expenditures.....	17,066	17,669	18,559	19,599	20,360
Federal.....	6,286	6,321	7,849	9,086	10,012
State.....	8,008	8,530	8,043	7,920	7,785
County.....	2,682	2,818	2,667	2,593	2,563
<b>3. Aid to the Disabled (ATD)</b>					
A. Total expenditures.....	54,943	83,855	117,934	154,569	198,683
Federal.....	26,323	37,344	53,603	73,577	98,078
State.....	21,919	35,506	49,461	61,875	75,454
County.....	6,701	11,005	14,870	19,117	25,151
B. Total administrative expenditures*.....	8,403	12,833	16,710	21,989	31,542
Federal.....	4,803	6,986	9,180	12,124	18,423
State.....	473	662	775	867	439
County.....	3,127	5,185	6,755	8,998	12,680
C. Subsistence expenditures.....	46,540	71,022	101,224	132,580	167,141
Federal.....	21,520	30,358	44,423	61,453	79,655
State.....	21,446	34,844	48,686	61,008	75,015
County.....	3,574	5,820	8,115	10,119	12,471
<b>4. Aid to Families with Dependent Children (AFDC)</b>					
A. Total expenditures.....	263,561	337,776	404,738	487,502	566,359
Federal.....	115,182	148,076	182,627	232,637	277,251
State.....	88,016	109,828	126,623	141,636	158,439
County.....	60,363	79,872	95,488	113,229	130,669
B. Total administrative expenditures*.....	40,756	56,838	69,295	85,982	111,745
Federal.....	25,166	33,619	41,221	50,357	70,611
State.....	907	1,265	1,406	1,447	941
County.....	14,683	21,954	26,668	34,178	40,193
C. Subsistence expenditures.....	222,805	280,938	335,443	401,520	454,614
Federal.....	90,016	114,457	141,406	182,280	206,640
State.....	87,109	108,563	125,217	140,189	157,498
County.....	45,680	57,918	68,820	79,051	90,476

**Table I B—Continued**  
**SOURCES OF FUNDS FOR SUPPORT AND MAINTENANCE PROGRAMS**  
(in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>5. Public Assistance Medical Care (PAMC)</b>					
Medical Assistance for the Aged (MAA)					
California Medical Assistance Program (Medi-Cal)					
A. Total expenditures.....	149,068	192,589	418,621	729,200	706,216
Federal.....	84,390	104,124	196,671	303,900	287,600
State.....	40,215	55,767	135,899	225,200	208,100
County.....	24,463	32,698	86,051	200,100	210,516
B. Total administrative expenditures.....	5,080	6,195	9,668	19,500	28,100
Federal.....	2,959	3,573	5,208	9,750	14,050
State.....	242	398	1,223	6,350	12,050
County.....	1,879	2,224	3,237	3,400	2,000
C. Assistance expenditures, medical care.....	143,988	186,394	408,953	709,700	678,116
Federal.....	81,431	100,551	191,463	294,150	273,550
State.....	39,973	55,369	134,676	218,850	196,050
County.....	22,584	30,474	82,814	196,700	208,516
<b>6. General Relief and other Welfare Programs</b>					
A. Total expenditures.....	31,955	24,951	25,061	30,767	33,593
State.....	177	292	639	695	-----
County.....	31,778	24,659	24,422	30,072	33,593
B. Total administrative expenditures.....	7,616	5,826	6,516	7,404	6,646
State.....	177	292	639	695	-----
County.....	7,439	5,534	5,877	6,709	6,646
C. Assistance expenditures.....	24,339	19,125	18,545	23,363	26,947
Subsistence, county.....	22,885	17,357	18,485	23,363	26,947
Medical care, county.....	1,454	1,768	60	-----	-----
<b>7. Cuban Refugee Program</b>					
A. Total expenditures, federal.....	377	443	458	1,203	2,224
B. Subsistence expenditures, federal.....	377	443	458	1,203	2,224
<b>8. Repatriated U.S. Citizens Program</b>					
A. Total expenditures, federal.....	6	5	12	20	27
B. Subsistence expenditures, federal.....	6	5	12	20	27
<b>9. School Lunch Program (Free and Reduced Cost Portion)</b>					
A. Total expenditures.....	2,366	3,792	2,947	3,266	3,910
Federal.....	277	258	251	348	428
State.....	192	196	214	218	231
County/local.....	1,897	3,338	2,482	2,700	3,251
B. Total administrative expenditures.....	192	196	214	218	231
Federal.....	-----	-----	-----	-----	-----
State.....	192	196	214	218	231
County/local.....	n.a.	n.a.	n.a.	n.a.	n.a.
C. Subsistence expenditures.....	2,174	3,596	2,733	3,048	3,679
Federal.....	277	258	251	348	428
State.....	-----	-----	-----	-----	-----
County/local.....	1,897	3,338	2,482	2,700	3,251

**Table 1 B—Continued**  
**SOURCES OF FUNDS FOR SUPPORT AND MAINTENANCE PROGRAMS**  
(in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>10. Surplus Food Program (Donated Commodities)</b>					
A. Total expenditures, federal.....	1,735	2,230	1,731	2,263	3,840
B. Administrative expenditures, federal.....	136	166	136	181	257
C. Subsistence expenditures, federal.....	1,599	2,064	1,595	2,082	3,583
<b>11. Food Stamp Program</b>					
A. Total expenditures.....			1,957	6,124	11,756
Federal.....			1,957	6,124	11,484
State.....			n.a.	n.a.	272
B. Administrative expenditures.....					500
Federal.....			n.a.	n.a.	228
State.....			n.a.	n.a.	272
C. Subsistence expenditures, federal.....			1,957	6,124	11,256
<b>12. Support and Maintenance Program Expenditures in Selected OEO Programs</b>					
A. Total expenditures, federal.....		2,704	3,466	17,665	17,212
B. Total administrative expenditures.....		n.a.	n.a.	n.a.	n.a.
C. Support and maintenance expenditures, federal.....		2,329	3,260	9,952	10,708
D. Medical care/services expenditures, federal.....		375	206	7,713	6,504
<b>13. Special Social Services and other Projects</b>					
A. Total expenditures <sup>a</sup> .....	1,961	3,385	2,855	2,624	1,267
Federal.....	1,369	2,621	2,038	1,757	816
State.....	592	764	817	867	451
B. Total administrative expenditures <sup>b</sup> .....					
<b>14. Unallocated Administrative Expenditures in Social Welfare</b>					
A. Total expenditures.....					2,778
Federal.....					915
State.....					1,863
B. Total administrative expenditures <sup>b</sup> .....					

\* Includes county case service expenditures.

† Includes administrative expenditures for MAA and Medi-Cal; PAMC administrative expenditures are included in the respective categorical aid programs.

‡ Local administrative expenditures included in program costs.

\* Program costs are considered as administrative expenditures, since they have been incurred for the improvement of service programs.

<sup>b</sup> Direct program costs are functionally considered as administrative expenses.

n.a. Not available.



Table I C

Summary of Expenditures by Functional Categories  
SUPPORT AND MAINTENANCE PROGRAMS  
by Fiscal Year and by Sources of Funds  
(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>A. Expenditures</b>					
1. Total expenditures.....	854,799	1,013,085	1,347,730	1,833,550	1,949,028
2. Total administrative expenditures.....	90,122	112,850	134,679	169,285	*207,566
3. Total direct program costs (assistance).....	764,677	900,235	1,213,051	1,664,265	1,741,462
A. Subsistence and maintenance expenditures.....	619,235	711,698	803,832	946,852	1,056,842
B. Medical care/services expenditures.....	145,442	188,537	409,219	717,413	684,620
<b>B. Sources of Funds</b>					
1. Total expenditures.....	854,799	1,013,085	1,347,730	1,833,550	1,949,028
Federal.....	388,248	459,876	617,380	839,048	902,240
State.....	303,887	362,405	468,283	589,625	606,117
County/local.....	162,664	190,804	262,067	404,877	440,671
2. Administrative expenditures.....	90,122	112,850	134,679	169,285	†207,566
Federal.....	48,946	62,416	74,554	92,358	119,523
State.....	3,269	4,263	5,810	11,092	16,994
County/local.....	37,907	46,171	54,315	65,835	71,049
3. Direct program costs.....	764,677	900,235	1,213,051	1,664,265	1,741,462
Federal.....	339,302	397,460	542,826	746,690	782,717
State.....	300,618	358,142	462,473	578,533	589,123
County/local.....	124,757	144,633	207,752	339,042	369,622
A. Subsistence and maintenance.....	619,235	711,698	803,832	946,852	1,056,842
Federal.....	257,871	296,534	351,157	444,827	502,663
State.....	260,645	302,773	327,797	359,683	393,073
County/local.....	100,719	112,391	124,878	142,342	161,106
B. Medical care/services.....	145,442	188,537	409,219	717,413	684,620
Federal.....	81,431	100,926	191,669	301,863	280,054
State.....	39,973	55,369	134,676	218,850	196,050
County/local.....	24,038	32,242	82,874	196,700	208,516

\* Includes case service costs of \$127,087. Expenditures for prior fiscal years are not identifiable.

† Includes case service costs of \$127,087.

**Table II A**  
**EXPENDITURES FOR TRAINING OR REHABILITATION PROGRAMS**  
 Per Definitional Category (b) of This Report  
 (in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>1. Manpower Development and Training Act (MDTA) Programs</b>					
A. Total expenditures.....	7,506	19,592	34,866	37,022	58,168
B. Administrative expenditures.....	461	795	1,448	1,649	1,804
C. Direct program costs.....	7,045	18,797	33,418	35,373	56,364
Support payments.....	2,479	5,842	14,066	15,636	19,009
Training.....	4,566	12,955	19,352	19,737	37,355
<b>2. Adult Basic Education (ABE) Program</b>					
A. Total expenditures.....		1,077	1,823	1,535	2,812
B. Administrative expenditures.....		8	120	87	138
C. Direct program costs.....		1,069	1,703	1,448	2,674
Instruction.....		1,069	1,703	1,448	2,674
<b>3. Vocational Rehabilitation Programs</b>					
A. Total expenditures.....	8,593	10,263	14,883	27,335	25,128
B. Administrative expenditures.....	553	596	677	1,320	1,358
C. Direct program costs.....	8,040	9,667	14,206	26,015	23,770
Medical services.....	810	1,022	1,604	2,172	2,390
Maintenance/transportation.....	827	1,265	1,862	4,397	4,305
Placement/training.....	1,426	2,200	3,297	6,242	6,141
Case services.....	4,977	5,180	7,443	13,204	10,934
<b>4. Human Resources Development (HRD) Program<sup>1</sup></b>					
A. Total expenditures.....				1,316	854
B. Administrative expenditures.....				n.a.	n.a.
C. Direct program costs.....				1,316	854
Case services.....				1,316	854
<b>5. Work Incentive Program (WIN)</b>					
A. Total expenditures.....					13
B. Administrative expenditures.....					13
<b>6. Service Center Program</b>					
A. Total expenditures.....				6,387	7,608
B. Administrative expenditures.....				1,092	1,298
C. Direct program costs.....				5,295	6,310
Case services.....				5,295	6,310
<b>7. Selected Office of Economic Opportunities (OEO) Programs</b>					
A. Total expenditures.....		9,419	40,958	72,442	54,619
B. Administrative expenditures <sup>2</sup> .....		33	304	12,466	9,097
C. Direct program costs.....		9,386	40,654	59,976	45,522
Placement/training.....		745	23,191	38,510	29,869
Case services.....		671	7,044	12,047	10,323
Instruction.....		7,970	10,419	9,419	4,830

<sup>1</sup> Does not include expenditures in Service Centers.

<sup>2</sup> Includes administrative expenditures for Job Corps and Work Experience Programs—Title V—EOA; others not available.

n.a. Not available

**Table II B**  
**SOURCES OF FUNDS FOR TRAINING OR REHABILITATION PROGRAMS**  
(in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>1. Manpower Development and Training Act (MDTA) Programs</b>					
A. Total expenditures					
Federal.....	7,506	19,592	34,866	35,715	57,425
State.....				1,307	743
B. Administrative expenditures					
Federal.....	461	795	1,448	1,611	1,765
State.....				38	39
C. Direct program costs					
Federal.....	7,045	18,797	33,418	34,104	55,060
State.....				1,269	704
Support payments					
Federal.....	2,479	5,842	14,066	15,636	19,009
Training					
Federal.....	4,566	12,955	19,352	18,468	36,651
State.....				1,269	704
<b>2. Adult Basic Education (ABE) Program</b>					
A. Total expenditures					
Federal.....		1,077	1,823	1,535	1,591
State.....		n.a.	n.a.	n.a.	1,221
B. Administration expenditures					
Federal.....		8	120	87	138
State.....					
C. Direct program costs (instruction)					
Federal.....		1,069	1,703	1,448	1,453
State.....		n.a.	n.a.	n.a.	1,221
<b>3. Vocational Rehabilitation Programs</b>					
A. Total expenditures					
Federal.....	4,509	5,413	10,158	22,238	20,897
State.....	4,084	4,850	4,725	5,097	4,231
B. Administrative expenditures					
Federal.....	285	313	488	1,123	1,207
State.....	268	283	189	197	151
C. Direct program costs					
Federal.....	4,224	5,100	9,670	21,115	19,690
State.....	3,816	4,567	4,536	4,900	4,080
Medical services					
Federal.....	607	767	1,203	1,629	1,793
State.....	203	255	401	543	597
Maintenance/transportation					
Federal.....	620	949	1,397	3,298	3,229
State.....	207	316	465	1,099	1,076
Placement/training					
Federal.....	1,070	1,650	2,473	4,682	4,606
State.....	356	550	824	1,560	1,535
Case services					
Federal.....	1,927	1,734	4,597	11,506	10,062
State.....	3,050	3,446	2,846	1,698	872

Table II B—Continued

## SOURCES OF FUNDS FOR TRAINING OR REHABILITATION PROGRAMS

(in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
4. Human Resources Development (HRD) Program					
A. Total expenditures, federal.....				1,316	854
B. Administrative expenditures.....				n.a.	n.a.
C. Direct program cost, federal.....				1,316	854
5. Work Incentive Program (WIN)					
A. Total expenditures, federal.....					13
B. Administrative expenditures, federal.....					13
6. Service Center Program					
A. Total expenditures					
Federal.....				3,368	3,893
State.....				3,019	3,715
B. Administrative expenditures					
Federal.....					
State.....				1,092	1,298
C. Direct program costs					
Federal.....				3,368	3,893
State.....				1,927	2,417
7. Selected Office of Economic Opportunities (OEO) Programs					
A. Total expenditures, federal.....		9,419	40,958	72,442	54,619
B. Administrative expenditures, federal.....		33	304	12,466	9,097
C. Direct program costs, federal.....		9,386	40,654	59,976	45,522
Case services, federal.....		671	7,044	12,047	10,823
Placement/training, federal.....		745	23,191	38,510	29,869
Instruction, federal.....		7,970	10,419	9,419	4,830

n.a. Not available.

**Table II C**  
**Summary of Expenditures by Functional Categories**  
**TRAINING OR REHABILITATION**  
**By Fiscal Year and by Sources of Funds**  
(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>A. Expenditures</b>					
1. Total expenditures.....	16,099	40,351	92,530	146,037	149,202
2. Total administrative expenditures.....	1,014	1,432	2,549	16,614	13,708
3. Total direct program costs.....	15,085	38,919	89,981	129,423	135,494
Support payments.....	2,479	5,842	14,066	15,636	19,009
Maintenance/transportation.....	827	1,265	1,862	4,397	4,305
Medical services.....	810	1,022	1,604	2,172	2,390
Placement/training.....	5,992	15,900	45,840	64,489	73,365
Instruction.....		9,039	12,122	10,867	7,504
Case services.....	4,977	5,851	14,487	31,862	28,921
<b>B. Sources of Funds</b>					
1. Total expenditures.....	16,099	40,351	92,530	146,037	149,202
Federal.....	12,015	35,501	87,805	136,614	139,292
State.....	4,084	4,850	4,725	9,423	9,910
2. Total administrative expenditures.....	1,014	1,432	2,549	16,614	13,708
Federal.....	746	1,149	2,360	15,287	12,220
State.....	268	283	189	1,327	1,488
Direct program costs.....	15,085	38,919	89,981	129,423	135,494
Federal.....	11,269	34,352	85,445	121,327	127,072
State.....	3,816	4,567	4,536	8,096	8,422
Support payments.....					
Federal.....	2,479	5,842	14,066	15,636	19,009
State.....					
Maintenance/transportation.....					
Federal.....	620	949	1,397	3,298	3,229
State.....	207	316	465	1,099	1,076
Medical services.....					
Federal.....	607	767	1,203	1,629	1,793
State.....	203	255	401	543	597
Placement/training.....					
Federal.....	5,636	15,350	45,016	61,660	71,126
State.....	356	550	824	2,829	2,239
Instruction.....					
Federal.....		9,039	12,122	10,867	6,283
State.....					1,221
Case services.....					
Federal.....	1,927	2,405	11,641	28,237	25,632
State.....	3,050	3,446	2,846	3,625	3,289



**Table III A**  
**EXPENDITURES FOR PROTECTIVE SERVICES PROGRAMS**  
 Per Definitional Category (c) of This Report  
 (in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>1. Family and Children Services and Adoptions</b>					
A. Total expenditures.....	15,446	16,986	18,563	21,134	19,659
B. Administrative expenditures.....	9,751	10,889	11,431	11,784	12,799
C. Direct program costs.....	5,695	6,097	7,132	9,350	6,860
Case services.....	5,695	6,097	7,132	9,350	6,860
<b>2. Day Care Services</b>					
A. Total expenditures.....		202	474	308	203
B. Administrative expenditures.....		n.a.	n.a.	n.a.	n.a.
C. Direct program costs.....		202	474	308	203
Case services.....		202	474	308	203
<b>3. Protective Services for the Mentally Handicapped</b>					
A. Total expenditures.....	6,406	7,476	8,777	9,955	12,800
B. Administrative expenditures.....	52	59	58	n.a.	760
C. Direct program costs.....	6,354	7,417	8,719	9,955	12,040
Case services.....	3,272	3,986	5,282	6,559	7,758
Subsistence.....	3,082	3,431	3,437	3,396	4,282
<b>4. Children Centers</b>					
A. Total expenditures <sup>a</sup> .....	5,711	6,289	6,954	6,945	11,590
B. Administrative expenditures.....	n.a.	n.a.	n.a.	n.a.	n.a.
C. Direct program costs.....	5,711	6,289	6,954	6,945	11,590
Case services <sup>b</sup> .....	5,711	6,289	6,954	6,945	11,590
<b>5. Compensatory Education—Title I (ESEA)</b>					
A. Total expenditures.....			64,829	72,423	81,532
B. Administrative expenditures.....			2,312	2,544	4,316
C. Direct program costs.....			62,517	69,879	77,216
Instruction.....			35,409	55,380	61,333
Health/food services.....			1,358	1,780	2,259
Transportation.....			753	857	1,512
Case services.....			24,997	11,862	12,112
<b>6. State Preschool Programs</b>					
A. Total expenditures.....			4,441	12,165	12,933
B. Administrative expenditures.....			n.a.	34	33
C. Direct program costs.....			4,441	12,131	12,900
Instruction.....			4,441	12,131	12,900
<b>7. Maternal and Child Health Services</b>					
A. Total expenditures.....	8,829	7,543	8,747	10,629	13,354
B. Administrative expenditures.....	178	27	30	98	101
C. Direct program costs.....	8,651	7,516	8,717	10,531	13,253
Medical services.....	8,651	7,516	8,717	10,531	13,253
<b>8. Crippled Children Services</b>					
A. Total expenditures.....	14,123	15,814	18,183	18,932	18,985
B. Administrative expenditures.....	1,236	1,569	1,679	1,853	1,847
C. Direct program costs.....	12,887	14,245	16,504	17,079	17,138
Medical services.....	12,887	14,245	16,504	17,079	17,138
<b>9. Selected OEO Programs—Protective Services</b>					
A. Total expenditures.....		1,419	15,572	35,163	27,499
B. Administrative expenditures.....		n.a.	n.a.	n.a.	n.a.
C. Direct program costs.....		1,419	15,572	35,163	27,499
Case services.....		1,419	15,572	35,163	27,499

<sup>a</sup> Expenditures are total expenditures minus reimbursement from State Preschool Program funds which are included with the State Preschool Program expenditures.

<sup>b</sup> Includes other services which cannot be individually segregated by expenditures.

n.a. Not available.

**Table III B**  
**SOURCES OF FUNDS FOR PROTECTIVE SERVICES PROGRAMS**  
(in thousands of dollars)

Program	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>1. Family and Children Services and Adoptions</b>					
A. Total expenditures					
Federal.....	1,843	1,590	1,691	1,048	695
State.....	12,132	13,973	14,971	17,979	18,657
County.....	1,471	1,423	1,901	2,107	307
B. Administrative expenditures					
Federal.....	688	868	795	1,048	695
State.....	7,592	8,598	8,735	8,629	11,797
County.....	1,471	1,423	1,901	2,107	307
C. Direct program costs					
Federal.....	1,155	722	896		
State.....	4,540	5,375	6,236	9,350	6,860
<b>2. Day Care Services</b>					
A. Total expenditures, federal.....		292	474	308	203
<b>3. Protective Services for the Mentally Handicapped</b>					
A. Total expenditures					
Federal.....	36	120	179	3,534	4,877
State.....	6,370	7,356	8,598	6,421	7,923
B. Administrative expenditures					
Federal.....					486
State.....	52	59	58	n.a.	274
C. Direct program costs					
Federal.....	36	120	179	3,534	4,391
State.....	6,318	7,297	8,540	6,421	7,649
Case services					
Federal.....	36	120	179	3,534	4,391
State.....	3,236	3,866	5,103	3,025	3,367
Subsistence					
State.....	3,082	3,431	3,437	3,396	4,282
<b>4. Children Centers</b>					
A. Total expenditures, state.....	5,711	6,289	6,954	6,945	11,590
<b>5. Compensatory Education—Title I (ESEA)</b>					
A. Total expenditures, federal.....			64,829	72,423	81,532
B. Administrative expenditures, federal.....			2,312	2,544	4,316
C. Direct program costs, federal.....			62,517	69,879	77,216
<b>6. State Preschool Program</b>					
A. Total expenditures					
Federal.....			3,291	9,096	9,674
State.....			1,150	3,069	3,259
B. Administrative expenditures					
Federal.....					
State.....			n.a.	34	33
C. Direct program costs					
Federal.....			3,291	9,096	9,674
State.....			1,150	3,035	3,226
<b>7. Maternal and Child Health</b>					
A. Total expenditures					
Federal.....	1,199	1,459	1,901	1,766	3,408
State.....	333	64	94	128	130
Local.....	7,297	6,020	6,752	8,735	9,816
B. Administrative expenditures					
Federal.....	18	19	26	84	85
State.....	160	8	4	14	16
C. Direct program costs					
Federal.....	1,181	1,440	1,875	1,682	3,323
State.....	173	56	90	114	114
Local.....	7,297	6,020	6,752	8,735	9,816

n.a. Not available.

Table III B—Continued

SOURCES OF FUNDS FOR PROTECTIVE SERVICES PROGRAMS  
(in thousands of dollars)

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>8. Crippled Children Services</b>					
A. Total expenditures					
Federal .....	1,074	1,289	1,841	2,376	2,100
State .....	9,337	10,145	11,636	11,557	11,962
County .....	3,712	4,080	4,706	4,999	4,923
B. Administrative expenditures					
Federal .....	638	914	914	987	972
State .....	598	655	765	866	875
C. Direct program costs					
Federal .....	436	375	927	1,389	1,128
State .....	8,739	9,790	10,871	10,691	11,087
County .....	3,712	4,080	4,706	4,999	4,923
<b>9. Selected OEO Programs—Protective Services</b>					
A. Total expenditures, federal .....		1,419	15,572	35,163	27,499
B. Administrative expenditures .....		n.a.	n.a.	n.a.	n.a.
C. Direct program costs, federal .....		1,419	15,572	35,163	27,499

n.a. Not available.

**Table III C**  
**Summary of Expenditures by Functional Categories**  
**PROTECTIVE SERVICES**  
**Per Definitional Category (c) of This Report**  
**(in thousands of dollars)**

	Fiscal Years				
	1963-64	1964-65	1965-66	1966-67	1967-68
<b>A. Expenditures</b>					
1. Total expenditures.....	50,515	55,819	146,540	187,654	198,555
2. Total administrative expenditures.....	11,217	12,544	15,510	16,313	19,856
3. Total direct program costs.....	39,298	43,275	131,030	171,341	178,699
Case services.....	14,678	18,083	60,411	70,187	66,022
Subsistence.....	3,082	3,431	3,437	3,396	4,282
Health/medical services.....	21,538	21,761	26,579	29,390	32,650
Instruction.....			39,850	67,511	74,233
Transportation.....			753	857	1,512
<b>B. Sources of Funds</b>					
1. Total expenditures.....	50,515	55,819	146,540	187,654	198,555
Federal.....	4,152	6,169	89,778	125,714	129,988
State.....	33,883	33,127	43,403	46,099	53,521
County/local.....	12,480	11,523	13,359	15,841	15,046
2. Administrative expenditures.....	11,217	12,544	15,510	16,313	19,856
Federal.....	1,344	1,801	4,047	4,663	6,554
State.....	8,402	9,320	9,562	9,543	12,995
County/local.....	1,471	1,423	1,901	2,107	307
3. Direct program costs.....	39,298	43,275	131,030	171,341	178,699
Federal.....	2,808	4,368	85,731	121,051	123,434
State.....	25,481	28,807	33,841	36,556	40,526
County/local.....	11,009	10,100	11,458	13,734	14,739
Case services.....	14,678	18,083	60,411	70,187	66,022
Federal.....	1,191	2,553	42,118	50,367	44,205
State.....	13,487	15,530	18,293	19,320	21,817
County/local.....					
Subsistence.....	3,082	3,431	3,437	3,396	4,282
Federal.....					
State.....	3,082	3,431	3,437	3,396	4,282
County/local.....					
Health/medical.....	21,538	21,761	26,579	29,390	32,650
Federal.....	1,617	1,815	4,160	4,851	6,710
State.....	8,912	9,846	10,961	10,805	11,201
County/local.....	11,009	10,100	11,458	13,734	14,739
Instruction.....			39,850	67,511	74,233
Federal.....			38,700	64,476	71,007
State.....			1,150	3,035	3,226
County/local.....					
Transportation.....			753	857	1,512
Federal.....			753	857	1,512
State.....					
County/local.....					

**Table IV**  
**A. SUMMARY OF TOTAL EXPENDITURES, BY FUNCTIONAL CATEGORIES**  
 (in thousands of dollars)

Expenditure category	Fiscal years											
	1963-64		1964-65		1965-66		1966-67		1967-68			
	Expenditure	Percent	Expenditure	Percent	Expenditure	Percent	Expenditure	Percent	Expenditure	Percent	Expenditure	Percent
1. Total expenditures.....	921,413	100.0	1,109,345	100.0	1,587,362	100.0	2,167,799	100.0	2,297,276	100.0		
2. Total administrative expenditures*.....	102,353	11.1	126,916	11.4	153,300	9.7	202,770	9.4	241,621	10.5		
3. Direct program costs.....	819,060	88.9	982,429	88.6	1,434,062	90.3	1,965,029	90.6	2,055,655	89.5		
Subsistence/maintenance/transportation.....	623,144	76.1	716,394	72.9	809,884	56.5	955,502	48.6	1,066,941	51.9		
Medical care/services.....	167,700	20.5	211,320	21.5	437,402	30.5	748,975	38.1	719,660	35.0		
Placement/training.....	5,992	.7	16,000	1.6	45,840	3.2	64,489	3.3	73,365	3.6		
Instruction.....	---	---	9,039	1.0	51,672	3.6	78,378	4.0	81,737	4.0		
Support (training programs).....	---	---	3,842	.6	14,066	1.0	13,636	.8	19,000	.9		
Case services.....	19,655	2.4	23,934	2.4	74,898	5.2	102,049	5.2	94,943	4.6		
1. Total expenditures†.....	921,413	100.0	1,109,255	100.0	1,586,800	100.0	2,167,241	100.0	2,296,785	100.0		
Subsistence/maintenance/transportation programs.....	854,799	92.8	1,013,085	91.3	1,347,730	84.9	1,833,550	84.6	1,949,028	84.9		
Training or rehabilitation programs.....	16,099	1.7	40,351	3.7	92,530	5.8	146,037	6.7	149,202	6.5		
Protective service programs.....	50,515	5.5	55,819	5.0	146,540	9.3	187,654	8.7	198,555	8.6		
Administration.....	---	---	90	.9	562	---	558	---	491	---		

\* Includes case service costs for subsistence and maintenance programs. For 1967-68 the case service costs included in administration were \$127,087, other years are not identifiable.

† Does not include State Office of Economic Opportunity.



**Table IV—Continued**  
**B. SUMMARY OF SOURCES OF FUNDS FOR EXPENDITURES, BY ELEMENTS OF COST**  
 (in thousands of dollars)

Expenditure category	Fiscal years					
	1963-64		1964-65		1965-66	
	Expenditure	Percent	Expenditure	Percent	Expenditure	Percent
1. Total expenditures-----	921,413	100.0	1,109,345	100.0	1,587,362	100.0
Federal-----	404,415	43.9	501,546	45.2	795,469	50.1
State-----	341,854	37.1	405,472	36.5	516,467	32.5
County/local-----	175,144	19.0	202,327	18.3	275,426	17.4
2. Total administrative expenditures*-----	102,353	100.0	126,916	100.0	153,300	100.0
Federal-----	51,036	49.9	65,366	51.5	81,467	53.1
State-----	11,939	11.6	13,956	11.0	15,617	10.2
County/local-----	39,378	38.5	47,594	37.5	56,216	36.7
3. Direct program costs-----	819,060	100.0	982,429	100.0	1,434,062	100.0
Federal-----	353,379	43.1	436,180	44.4	714,002	49.8
State-----	329,915	40.3	391,516	39.9	500,850	34.9
County/local-----	135,766	16.6	154,733	15.7	219,210	15.3
Subsistence/maintenance/transportation-----	623,144	100.0	716,394	100.0	809,884	100.0
Federal-----	258,491	41.5	297,483	41.5	353,307	43.6
State-----	253,934	42.3	306,520	42.8	331,699	41.0
County/local-----	100,719	16.2	112,391	15.7	124,878	15.4
Medical care/service-----	167,790	100.0	211,320	100.0	437,402	100.0
Federal-----	83,655	49.9	103,508	49.0	197,032	45.0
State-----	49,088	29.2	63,470	31.0	146,038	33.4
County/local-----	35,047	20.9	44,342	20.0	94,332	21.6
Placement/training-----	5,992	100.0	15,900	100.0	45,840	100.0
Federal-----	5,636	94.1	15,350	96.5	45,016	98.2
State-----	356	5.9	550	3.5	824	1.8
1967-68	Expenditure	Percent	Expenditure	Percent	Expenditure	Percent
1. Total expenditures-----	2,297,276	100.0	2,167,799	100.0	2,297,276	100.0
Federal-----	1,171,980	51.0	1,101,876	50.8	1,101,876	50.8
State-----	686,579	29.9	645,205	29.8	645,205	29.8
County/local-----	455,717	19.9	420,718	19.4	455,717	19.9
2. Total administrative expenditures*-----	241,621	100.0	202,770	100.0	241,621	100.0
Federal-----	138,757	57.4	112,808	55.6	138,757	57.4
State-----	31,508	13.0	22,020	10.9	31,508	13.0
County/local-----	71,356	29.6	67,942	33.5	71,356	29.6
3. Direct program costs-----	2,055,655	100.0	1,965,029	100.0	2,055,655	100.0
Federal-----	1,033,223	50.3	980,068	50.3	1,033,223	50.3
State-----	638,071	31.0	623,185	31.7	638,071	31.0
County/local-----	384,361	18.7	352,776	18.0	384,361	18.7
Subsistence/maintenance/transportation-----	1,965,941	100.0	955,502	100.0	1,965,941	100.0
Federal-----	507,404	47.6	448,982	47.0	507,404	47.6
State-----	398,431	37.3	364,178	38.1	398,431	37.3
County/local-----	161,106	15.1	142,342	14.9	161,106	15.1
Medical care/service-----	719,660	100.0	748,975	100.0	719,660	100.0
Federal-----	288,557	40.1	308,343	41.2	288,557	40.1
State-----	207,848	28.9	230,198	30.7	207,848	28.9
County/local-----	223,255	31.0	210,434	28.1	223,255	31.0
Placement/training-----	73,365	100.0	64,489	100.0	73,365	100.0
Federal-----	71,126	96.9	61,660	95.6	71,126	96.9
State-----	2,239	3.1	2,829	4.4	2,239	3.1

Instruction.....	-----	-----	9,039	100.0	51,972	100.0	78,378	100.0	81,737	100.0
Federal.....	-----	-----	9,039	100.0	50,822	97.8	75,343	96.1	77,290	94.6
State.....	-----	-----	-----	-----	1,150	2.2	3,035	3.9	4,447	5.4
Support (training).....	-----	-----	5,842	100.0	14,066	100.0	15,636	100.0	19,009	100.0
Federal.....	-----	-----	5,842	100.0	14,066	100.0	15,636	100.0	19,009	100.0
Case services*.....	-----	-----	23,934	100.0	74,898	100.0	102,049	100.0	94,943	100.0
Federal.....	-----	-----	4,958	20.7	53,759	71.8	79,104	77.2	69,837	78.6
State.....	-----	-----	18,976	79.3	21,139	28.2	22,945	22.8	25,106	26.4

\* Does not include case services provided under support and maintenance programs for which such services are classified as administration.



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**Appendix B**  
**BIBLIOGRAPHY OF SOURCE MATERIAL**

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Progress Report to the Legislature

1969 Regular Session

SENATE COMMITTEE ON WATER RESOURCES

## THE DOS RIOS PROJECT

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SENATE

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## LETTER OF TRANSMITTAL

California Legislature  
Senate Committee on Water Resources  
Sacramento, January 28, 1969

HON. ED REINECKE

*President of the Senate, and  
Gentlemen of the Senate  
Senate Chamber, California*

Mr. President and Gentlemen of the Senate :

Your Senate Committee on Water Resources submits herewith its Progress Report to the Legislature entitled "The Proposed Dos Rios Project".

The committee has conducted an extensive review of this controversial project and has explored the many problems which must be solved. This report sets forth our evaluation and our conclusions and recommendations.

Respectfully submitted,

GORDON COLOGNE, *Chairman*

JOHN L. HARMER

MERVYN DYMALLY

HOWARD WAY

JAMES Q. WEDWORTH

JAMES E. WHETMORE





## INTRODUCTION

Pursuant to the provisions of Public Law 78-534, the Chief of Engineers on July 5, 1968, transmitted his proposed report on the Eel River Basin, California, Interim Report on Water Resources Development for Middle Fork Eel River, to the Administrator of the Resources Agency for review and comment by the State of California. This act permits affected nonfederal agencies a period of 90 days to review proposed federal water project reports and to submit comments on the report to the Chief of Engineers. Such comments are then included as an appendix to the project feasibility report when it is transmitted by the Chief of Engineers to Congress for authorization.

The Governor or his designee, within 10 days of receipt of a proposed federal water resources development report, is required by state law to transmit copies of the proposed report to each house of the Legislature for study by appropriate legislative committees.<sup>1</sup> Legislative committees to which such reports are assigned are specifically authorized by law to submit written comments upon the proposed report<sup>2</sup> which must be transmitted to the federal agency along with the comments of the Governor and the affected state departments or commissions.<sup>3</sup>

Under this authority, the Senate Committee on Water Resources has held two public hearings jointly with the Assembly Water Committee for the purpose of obtaining background data necessary for the formulation of formal committee comments on the Dos Rios Project and to afford all interested parties an opportunity to present their views to the Legislature.

Normally, the committee does not hold public hearings during its review of proposed federal water project reports. The extreme controversy, which has been generated by the Corps of Engineers' proposal to construct a high dam at Dos Rios on the Middle Fork of the Eel River, however, has mandated a thorough public review of the proposal before the formulation of a specific committee position.

Numerous objections have been raised to the Corps's Dos Rios proposal. Several of the objections, which were raised at the committee hearings, were based upon the interpretation of engineering, economic and geologic data and can be resolved through factual evaluation. Others involve basic policy or philosophy and must be dealt with on the basis of logic, practicality, and equity.

The evaluation of the Corps of Engineers' Dos Rios Dam and Reservoir proposal has been a difficult and complex task. For the purposes of our analysis, we have divided the various issues before the committee into two basic categories; that is, policy and engineering.

Opponents of the Dos Rios Project have repeatedly questioned the engineering aspects of the Dos Rios proposal, including economics, geology, etc., and have asked on several occasions for an independent engineering evaluation of the corps's proposal.

<sup>1</sup> Water Code Section 451.

<sup>2</sup> Water Code Section 452.

<sup>3</sup> Water Code Section 453.

As a practical matter, it would be impossible for this committee to recommend either approval or disapproval of the project without such an evaluation in view of the serious nature of the questions which have been raised.

In order to obtain such an evaluation, this committee asked for and was granted approval by the Senate Rules Committee to hire an engineering consultant to conduct a technical evaluation of the Corps's Dos Rios Dam and Reservoir proposal and to provide other engineering services for the committee.

Proposals were received from various firms of consulting engineers from throughout the state. The firm of Clair A. Hill and Associates of Redding was finally selected to serve as engineering consultants for the committee. Their credentials are well known to all who are familiar with water development in the western United States.

The committee's engineering consultants have conducted as thorough a technical review of the Corps's proposal as was possible within the limited time and funding available. Their report to the committee on the Dos Rios Dam and Reservoir proposal, which appears as Appendix A, is hereby incorporated into and made a part of this report. Their conclusions and recommendations have been reviewed and are concurred in by the committee.

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. The State Water Project will require additional water supplies in order to meet existing contractual commitments. Additional water will be required beginning in 1986 and will increase to a magnitude of about 900,000 acre-feet annually by 1990. It appears to the committee that the Dos Rios Project offers the surest, most economic means of meeting the estimated deficiency in the State Water Project, and it is our recommendation that the State of California support the immediate authorization and construction of the project.

2. Salt water conversion, waste water reclamation, weather modification, other projects on the north coast, or other conventional water projects within the central valley basin will not provide a practical alternative to the Dos Rios Project within the time required.

3. Studies by our engineers indicate that an additional 200,000 acre-foot of annual yield can be obtained from the Dos Rios Project by a slight increase in the height of the dam, by reducing the amount of dead storage, or by a combination of these measures. We believe that the project, if constructed, should be built to develop the maximum yield economically feasible. We therefore recommend that additional study and evaluation be conducted of project sizing and operation before final design and that the project be constructed to the maximum size that is economically justifiable.

4. The Dos Rios Project, in addition to firming up the yield of the State Water Project, will provide vital flood control on the Eel River. In combination with the authorized levees in the delta, the Dos Rios Project will contain the so-called 100-year flood with a 750,000-cubic-foot per second uncontrolled discharge. It will also contain a flood of the magnitude of that experienced in December of 1964 by a small 4-foot encroachment on the levee freeboard. Peak uncontrolled discharge for a flood of this magnitude is 840,000 cubic-feet per second. The Dos Rios Project in combination with the delta levees and the proposed English Ridge Project will provide standard flood control on the Eel River.

In our judgment, flood control on the Eel River is essential and can best be provided through the construction of these projects. The desperate need for flood control on the Eel River by itself justifies their early authorization and construction.

5. The Dos Rios Project has potential to ultimately provide 7,000,000 visitor days of recreation use annually. Proposed development will be limited to facilities to accommodate 2,000,000 visitor days annually due to the fact existing road constraints will limit attendance to approximately that amount. The Corps, however, proposes to acquire about 14,000 acres of land pending possible future development. The committee cannot concur with this proposal in the absence of reason-

able assurance that a higher level of recreation development will in fact be accomplished. Recreational development beyond that envisioned in the adopted plan is in need of further study before definite conclusions can be reached.

6. The development of recreation facilities at the Dos Rios Reservoir must be in accordance with the provisions of Public Law 89-72 which requires a nonfederal agency to assume one-half of the separable recreation costs and all costs of operation, maintenance, and replacement associated with the recreational facilities, in order to have recreation included as a project purpose. It is our recommendation that the State of California assume the nonfederal responsibility under Public Law 89-72 and that the provisions of state law governing state participation under this act be amended to provide automatic state participation in the development of recreation facilities at federal water projects for which the state contracts for the conservation yield. The Bureau of Land Management has recommended that it be vested with responsibility for the management of all land and water areas of the Dos Rios Project if the project lands are found to be appropriate for federal administration as a part of the public domain classified for retention in federal ownership. If this finding is made, we concur with the Bureau of Land Management recommendation in lieu of state management.

7. The Corps's proposal for the development of recreation facilities at the Dos Rios Reservoir provides for the accommodation of 1,000,000 visitor-days as a project purpose and 1,000,000 visitor-days as a mitigative measure for the Indian community. In their cost-benefit analysis, the Corps took credit for only those benefits to be provided by facilities developed as a project purpose. We question this approach due to the fact that benefits accruing as a result of recreational development on Indian lands are just as attributable to the project as are benefits resulting from other project development. Additionally, we would point out that if facilities are developed to accommodate recreation use over and above that anticipated in the adopted plan of development, increased benefits will accrue as the result of such development and project costs should be re-allocated to properly reflect the benefits derived from each function. If facilities to accommodate 1,000,000 visitor-days of annual use are not developed on Indian lands, facilities to serve this capacity should be developed on other lands as a project purpose.

8. Although additional geologic and soils investigations are necessary, it appears that geologic investigations conducted to date are more than sufficient for the purpose of establishing project feasibility. The committee recognizes that detailed geologic, soils, and engineering investigations required to develop necessary information about a proposed project are not conducted until a later stage of project development.

9. It is apparent that sufficient fish and wildlife studies have not been conducted to determine those measures necessary to properly mitigate project caused fish and wildlife losses. We concur with the California Department of Fish and Game's recommendation that necessary fish and wildlife studies be continued on an uninterrupted



basis and that such studies be specifically provided for in the legislation authorizing the Dos Rios Project. We, additionally, concur with the department's recommendation that the authorizing legislation specifically permit state funding of such studies with project credit being given for state funds expended.

10. It is difficult for the committee to understand why fishery enhancement has not been included as a purpose of the Dos Rios Project. Certainly there is ample authority—even responsibility—to accomplish fishery enhancement when such is possible. It is our recommendation that fishery enhancement be included as a purpose of the Dos Rios Project in the legislation authorizing the project.

11. It appears that additional consideration and study must be given to the location of the proposed anadromous fish hatchery. We believe that consideration should be given to the possibility of locating the proposed hatchery downstream from the confluence of the Middle Fork with the Main Eel River. Such a location would permit the design and construction of a single hatchery to serve both the needs of the Dos Rios Project and the Bureau of Reclamation's proposed English Ridge Project on the Main Eel. We believe this might provide savings in capital cost and operation and maintenance expenditures to both of these projects.

12. It appears that it may not be possible to fully mitigate project caused wildlife losses. We believe that mitigative measures should be confined to existing publicly owned lands to the extent practicable but recognize it may be necessary to acquire some lands in order to "round out" land holdings into manageable units. We believe that additional studies are necessary to determine the efficacy of the wildlife as well as fishery mitigation proposals and that consideration should be given to offsite mitigation of wildlife losses.

13. The Dos Rios Project will have a tremendous impact upon Mendocino County and will cause numerous public service problems. The influx of nearly 2,000 construction workers and their families into Mendocino County will increase local governmental operating costs by nearly \$725,000 over the project construction period. While state law \* provides financial assistance to local public agencies for increased costs resulting from the construction of state water projects, there is no comparable provision of federal law. We feel that such payments must be made to local agencies impacted by the Dos Rios Project and are essential for the orderly provision of necessary public services. It is our recommendation that the legislation authorizing the Dos Rios Project include an authorization for the Corps of Engineers to make payments to local public agencies for increased operating costs occasioned by project construction upon essentially the same basis as that contained in the State of California's Byrne Act. The State of California, through adoption of this act, has provided an equitable solution for a most difficult problem. We feel that the federal government must now recognize the impact of their projects upon local public agencies and must take appropriate steps to provide an equally acceptable solution.

14. Existing federal and state statutes provide financial assistance to school districts impacted by water project construction. With this as-

\* The Byrne Act, Water Code Section 12950 et seq.



sistance, it appears that the increased enrollments caused by the construction of the Dos Rios Project will not cause difficult problems for the local school district in terms of increased operating costs or capital outlay requirements.

15. The project will have an additional, long-term impact upon the County of Mendocino and other local public agencies responsible for providing services in the project area. According to the County of Mendocino, the present assessed valuation of land within the project take line is about \$3,000,000. The acquisition of this land for project purposes would remove approximately 2.4 percent of the assessed valuation of the entire county from the local tax rolls. For the Round Valley Unified School District the loss would be nearly 50 percent of their \$6,382,890 assessed valuation. The loss of revenue to all public agencies taxing within Round Valley is \$262,799 annually based upon 1968-69 tax rates.

We believe this problem to be somewhat unique and feel that it warrants special consideration in order to assure that an unfair burden is not placed upon the people of Mendocino County through the loss of tax base. In order to assure equitable treatment, it is our recommendation that authority be provided the Corps of Engineers to make payments in lieu of taxes to those public agencies which will suffer a loss of tax revenue due to the removal of project lands from the local tax rolls. Payments should be made only upon the net tax loss—that is, the current tax rate applied to the value of property lost because of the project less the value of property added by the project. Such payments should be considered a project cost and apportioned among the project's purposes.

Payments in lieu of taxes should begin in the first year of net loss and continue until such time as the lost tax base, plus ordinary growth, is completely replaced by new development. We believe that this problem is in need of further study in order to precisely determine its magnitude. We also recommend that the Corps of Engineers and the Department of Water Resources immediately sit down with affected local agencies in order to work out an acceptable formula for determining the amount of payments in lieu of taxes.

16. The matter of providing just compensation and developing a substitute economy for the Indian community is particularly difficult. We believe that the entire matter is in need of additional study and that an equitable solution can only be attained through negotiation with representatives of the Indian community. We feel that fair and equitable treatment must be accorded the Indian community and that full value must be paid for any lands acquired for project purposes.

17. It has for some time been recognized that the State of California, in developing water for export, also had a responsibility not only to see that the water requirements of the areas of origin are met but to develop projects which will enhance the economies of such areas through the development of their recreation and fish and wildlife resources. We believe this policy to be sound as it has been applied to the State Water Facilities and feel that it should be carried through to the development of water projects on the north coast. We feel, however, that there should be certain guidelines to govern the development of an-

illary projects. Suggested guidelines are set forth in the section of this report entitled North Coast Development Policy.

18. The Dos Rios Project, which will inundate Round Valley, will require the complete reorientation of the present economic base of the area. We believe that the lands necessary for the project should be acquired immediately after project authorization and that the town of Covelo should be relocated at the earliest possible date in order to minimize the effect of the project upon the economy. Agricultural lands acquired for the project should be leased back to those owners desiring to continue their farming operation during the construction period. In the event funds are not forthcoming from Congress for the early acquisition of project lands, it is our recommendation that the Department of Water Resources advance funds to the Corps of Engineers for such purposes with the amount of the advance, plus interest, being credited against the state's repayment commitment.

19. Round Valley contains valuable archaeological and anthropological data about the early Indian inhabitants of the area. We believe that an archaeological salvage program is necessary in the area to be inundated by the Dos Rios Dam and that the costs of the program are properly chargeable to the project. This program should begin at the earliest possible time and continue through the project construction period. There appears to be a difference of professional opinion as to the level at which the salvage program should be conducted. We cannot judge the magnitude of the program which will be necessary to develop a meaningful cultural and physical history of the early inhabitants of Round Valley. Therefore, it is our recommendation that the Corps of Engineers consider the immediate appointment of a board of recognized experts in the fields of archaeology and anthropology to formulate the salvage program and to supervise the survey, excavation, and interpretation work.





## THE DOS RIOS PROJECT

### *General Description*

The proposal of the U.S. Army Corps of Engineers, as set forth in their Interim Report on Water Resources Development for the Middle Fork Eel River, dated April 1968, envisions a 730-foot-high earth and rockfill dam a short distance upstream from the community of Dos Rios. The reservoir created by this structure would have a capacity of approximately 7,600,000 acre-feet and would cover about 40,000 surface acres.

The reservoir capacity includes 2,000,000 acre-feet for a minimum pool with 5,000,000 acre-feet of storage being operated for water supply purposes and 600,000 acre-feet for flood control. The reservoir would conserve the runoff from approximately 745 square miles of watershed which, as stated by the Corps of Engineers, is approximately 21 percent of the entire Eel River basin.

### PROJECT BENEFITS

#### *Flood Control*

One of the most pressing water resources problems in California today is the control of floods caused by the totally unregulated flow of streams in the northwestern area of the state. These streams, most notably the Eel, periodically, and all too regularly, overflow their channels literally causing millions of dollars in public and private property losses, destroying ranches and businesses, and, most tragically, causing needless loss of life.

The flood of December 1964 resulted in damages of nearly \$57,000,000 within the Eel River basin alone. Likewise, in December of 1955, there were approximately \$15,400,000 in damages to the same area. Needless to say, the north coastal area will not and cannot grow economically unless such floods are controlled for the simple reason that the investment of capital in business and industry cannot be justified with the everpresent flood threat which exists in the area.

One of the most basic criticisms of the Dos Rios Project, and perhaps the most damaging to the Corps of Engineers' proposal, unless understood, is that the Dos Rios Project really does not provide any measurable flood control benefit and does not solve or even reduce the flood problem on the Eel River.

The opponents of the Dos Rios Project cite the fact that the Dos Rios Dam will reduce the peak flood stage at Fortuna by only 1.5 feet to support this contention. Closer examination indicates, however, that in terms of discharge, the peak flood flow of 840,000 cubic feet per second experienced during the 1964 flood would be reduced to 650,000 cubic feet per second, or a substantial 23-percent reduction.

In terms of a 1-percent flood probability, which is generally referred to as the 100-year flood, the peak discharge of 750,000 cubic feet per second would be reduced to 580,000. This amounts to a decrease of 170,000 cubic feet per second, which is also a 23-percent reduction.

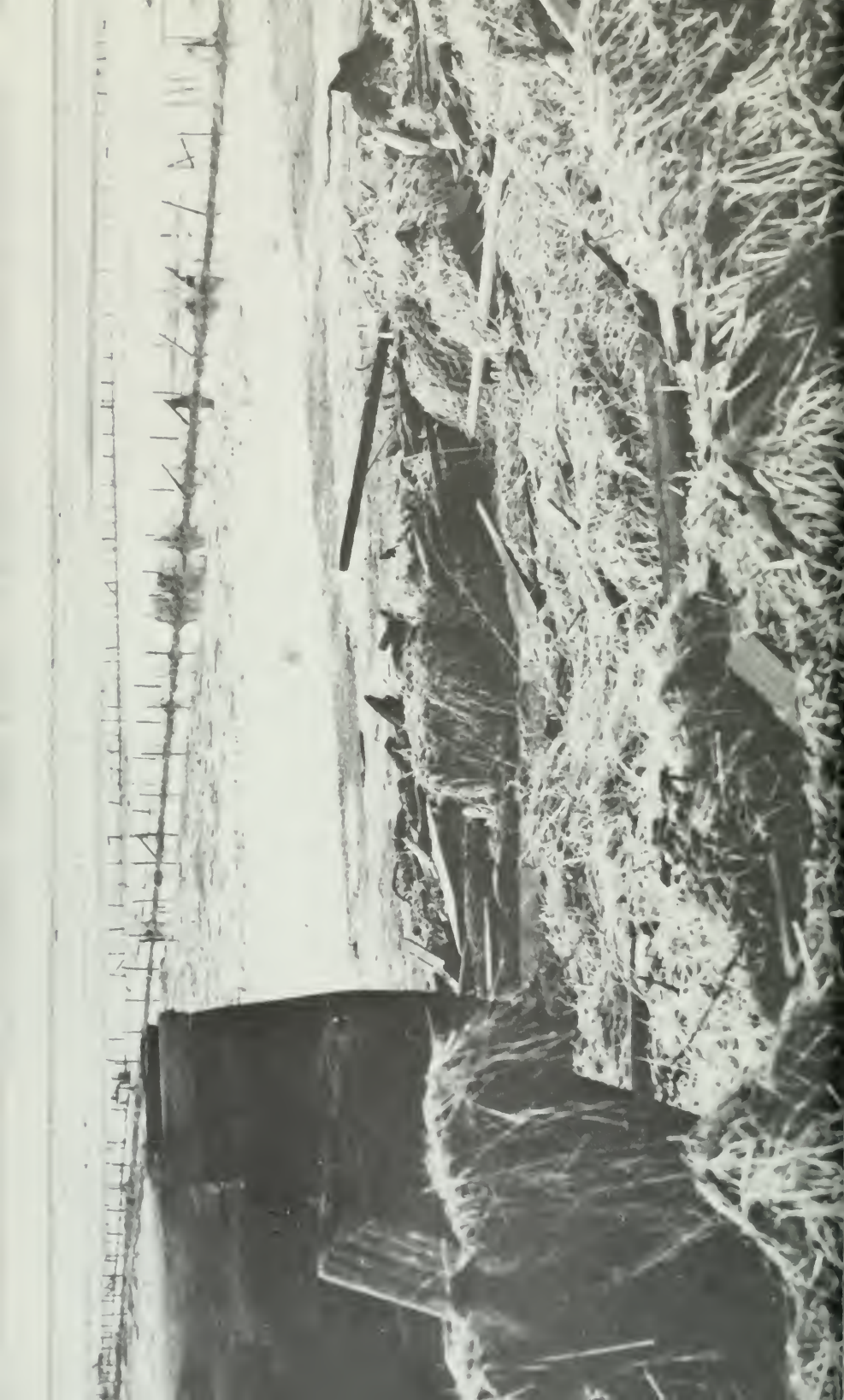


Floods in main Eel near Rohnerville (U.S. 101) near





Floods in delta near Fortuna (1964)





Flood in delta near Ferndale (1964)



Data presented by the Corps of Engineers at joint hearings held by this committee and the Assembly Water Committee on October 17, 1968, perhaps express more graphically the impact of the Dos Rios Dam upon flood control in the Eel River Basin. At that time, Colonel Frank C. Boerger, District Engineer for the U.S. Army Corps of Engineers, San Francisco District, cited flood damage figures to demonstrate the accomplishments of the Dos Rios Project in terms of dollars. He stated, "The December 1955 flood caused about \$15,400,000 worth of damages in the area of the basin (Eel River) affected by the proposed project, based upon 1967 prices and conditions. With the Dos Rios Project in place, these damages would be reduced to about \$7,100,000, a reduction of over \$8,000,000. Likewise, the December 1964 flood caused damages of about \$57,000,000 in the area of the basin affected by the project. Again, with Dos Rios in place, these damages would be reduced to about \$18,000,000, a reduction of about \$39,000,000, which is a significant amount by any standard of measure."<sup>4</sup>

It is extremely important to note that, in terms of flood frequency, destruction of the magnitude experienced during the December 1955 flood can be expected to recur on the average of 1 year in 11.

The Corps of Engineers estimates that the Dos Rios Reservoir, with its 600,000 acre-feet of flood control storage, will provide \$1,220,000 in average annual benefits through the reduction of flood damages. In estimating this benefit, the corps has assumed that the levees in the Eel River Delta will be constructed to contain a flow of 600,000 cubic-feet per second.

Admittedly, the Dos Rios Project by itself does not provide total flood control. Criticisms to this effect, while true, are perhaps unjust, for to properly evaluate the flood control benefits of the project, one must not only have an understanding of the additional measures which will be necessary to provide standard flood control on the Eel River, but their interrelationship with each other, and with the proposed Dos Rios Project.

The flood control system for the Eel River involves three key elements, all of which must be constructed and in operation before standard flood control can be achieved. The three elements are the Dos Rios Dam and Reservoir, the English Ridge Dam and Reservoir, and the Eel River Delta levee project.

It is important to note that the Eel River Delta levee project has already been authorized by Congress and advanced planning is presently underway. These planning studies, according to the Corps of Engineers, have indicated that it would not be practical or economically feasible to construct levees which would contain a flood flow in excess of 600,000 cubic feet per second.

If the delta levees are constructed to contain a flow of this magnitude, and it is assumed by the Corps of Engineers that they will be so constructed, such levees in combination with the Dos Rios Project would contain the so-called 100-year flood. A flood of this magnitude, under present conditions, has a peak discharge of about 750,000 cubic-

<sup>4</sup> Statement of Colonel Frank C. Boerger, District Engineer, U.S. Army Corps of Engineers, San Francisco District, before the joint hearing of the Senate Committee on Water Resources and the Assembly Water Committee, October 17, 1968, pp. 27-28.

feet per second, which would be reduced to 580,000 cubic-feet per second by the Dos Rios Project.

It was also pointed out by the Corps of Engineers that a flood of the magnitude of that experienced in December of 1964 could be contained within the delta levees by a small  $\frac{1}{2}$ -foot encroachment on the levee freeboard if the peak flow of 840,000 cubic feet per second were reduced to 650,000 cubic feet per second as would be accomplished by the Dos Rios Project.

The English Ridge Dam and Reservoir on the main Eel River, however, is essential to provide standard flood control in the Eel River Delta. This reservoir, in combination with the Dos Rios Reservoir, would reduce the discharge for a flood of the December 1964 magnitude to 580,000 cubic feet per second, which is within the projected capacity of the levees to be constructed in the Eel River Delta. The United States Bureau of Reclamation is presently studying the feasibility of the English Ridge Dam and Reservoir and expects to complete a report on that project in the near future.

Few people could argue with the desperate need for flood control on the Eel River. It is also quite apparent that single purpose flood control projects on the Eel River are not economically justifiable and that the most effective means of providing essential flood control is through the development of multiple-purpose water resources projects.

It appears to this committee that flood control on the Eel River can best be accomplished through the construction of the Dos Rios and English Ridge Reservoirs and the delta levees. We also believe that the work on these projects should be expedited by the appropriate agencies and that they should be authorized and constructed at the earliest possible time.

### *Water Supply*

As stated earlier, approximately 5,000,000 acre-feet of the 7,600,000 acre-feet of storage capacity in the Dos Rios Reservoir would be dedicated to and operated for the purpose of water supply. According to the Corps of Engineers, the dedication of this amount of active storage to water supply purposes was based upon the following factors: "(a) requirements for in-basin releases for fish mitigation and other purposes, (b) the availability of water over and above projected in-basin needs which could not be met from other potential developments of the basin water resources, and (c) the need to develop the Middle Fork to the maximum extent in view of California's water supply demand schedule and the nature of the system in which the project will operate."<sup>5</sup> The plan of development for the Dos Rios Project would provide an annual yield for water supply purposes of some 900,000 acre-feet at the delta. The sizing of the Dos Rios Reservoir to yield this amount of water was essentially based upon the requirements of the State Water Project for additional water. These requirements, which will be discussed in greater detail later in this report, were determined by the projected availability of water to meet the demands of the state's several water supply contractors should the historic seven-year dry cycle of from 1928 through 1934 recur.

<sup>5</sup> *Ibid.*, p. 30.



In their analysis of water supply benefits, the Corps of Engineers utilized a value of \$30 per acre-foot of project yield at the Sacramento-San Joaquin Delta, which was reduced by \$1 per acre-foot to cover unforeseen contingencies, such as minor conveyance facilities that might be required. Therefore, based upon a \$29-per-acre-foot net value in the delta, the water supply benefit from the Dos Rios Project would be equal to \$26,100,000 annually. In their review of the Corps of Engineers' Dos Rios proposal, our engineers have pointed out that the proposed 7,600,000 acre-feet of storage capacity is not the physical limitation of the dam site and that it is possible to increase the annual project yield by 200,000 acre-feet. They point out that this could be accomplished by raising the dam about 35 feet, by decreasing the amount of dead storage, or by a smaller increase in dam height in combination with a decrease in dead storage.

We concur with our engineers' recommendation that additional consideration be given to project sizing and operation. We believe that the project, if constructed, should be built to obtain the maximum yield which is economically possible.

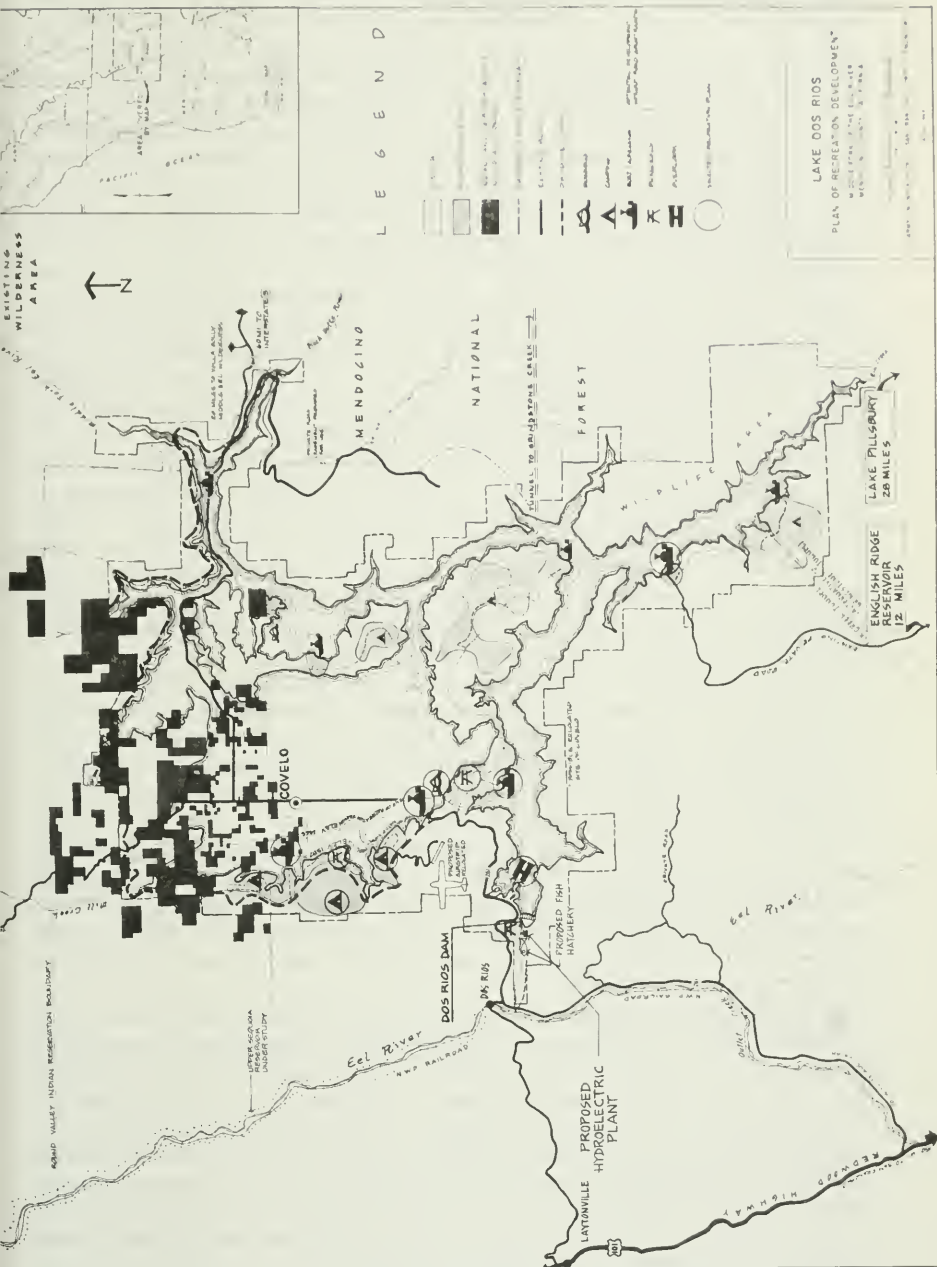
### *Recreation*

The Corps of Engineers has formulated relatively extensive preliminary plans for the development of recreation facilities around the proposed Dos Rios Reservoir. The large reservoir formed by the Dos Rios Dam will have a surface in excess of 38,000 acres at maximum elevation. Estimates made by the Corps of Engineers indicate that the reservoir has a potential for about 7,000,000 visitor-days of use annually by the end of the project's 100-year economic life. The corps study recognizes, however, that the full recreation potential cannot be realized and that visitor-day use will be limited to about 2,000,000 days annually, due to the presently limited road access to the area.

Corps of Engineers' recreation plans envision the accommodation of approximately one-half of the projected recreation demand, or 1,000,000 visitor-days annually, upon the Indian lands in the area. The remaining 1,000,000 recreation days would be accommodated as a part of the project on lands acquired for such purposes. In the event that the Round Valley Indian community does not desire the development of their lands to accommodate one-half the anticipated public recreation use, project recreation plans should be revised and necessary facilities developed as a project purpose.

Initial project recreation development is estimated to require approximately 800 acres of land and would include the construction of 190 picnic sites, 500 campsites, one swimming area, nine lanes of boat-launching ramps, and necessary access roads. These lands and facilities would accommodate the anticipated 1,000,000 visitor-days of annual use to be provided as a project purpose.

The derivation of benefits allocated to the project recreation function is based only upon the development of the facilities which are being provided as a project purpose. Using a value of \$1.40 per visitor-day of use and adjusting visitation to allow for a seven-year buildup, the Corps of Engineers estimates that the project will provide annual recreation benefits of about \$1,200,000. We question the Corps's approach in computing recreation benefits due to the fact that recreation



use accommodated on Indian lands results in benefits which are directly attributable to the project and which we feel should be recognized in the Corps's cost-benefit analysis. Although the adopted recreation plan will require only 800 acres of land for maximum development, the Corps proposes to acquire and hold some 14,000 acres of land under the Federal Water Project Recreation Act for recreation purposes pending the possibility of more extensive development at some indefinite future time. As noted in the Corps's report, however, development of recreation facilities to accommodate use over and above the presently anticipated 2,000,000 visitor-days annually will be impossible due to existing road constraints.

While we believe land should be acquired and facilities developed to support the highest level of recreation use possible consistent with demand, we cannot concur with the Corps's proposal in the absence of reasonable assurance that a higher level of recreational development will in fact be accomplished. There are, in the committee's judgment, several other factors which must be considered in evaluating the Corps's recreation land acquisition proposal.

First, and perhaps most important, is the impact the project will have upon Mendocino County. While this subject is discussed in somewhat greater detail later in this report, we believe that every effort should be made to minimize the impact of the project on the area in order to provide as little economic disruption and preserve as much of the local tax base as possible. To achieve this end, it is of paramount importance that only those lands actually necessary to serve the several project functions be acquired.

It appears that the Corps plans to acquire lands which not only are in excess of those necessary to accommodate the anticipated level of recreation use but possibly the projected maximum as well. For example, based upon a 120-day recreation season, the 14,000 acres of land to be acquired would provide 1,680,000 visitor-days of use annually if only one person used each acre each day.

This amount of use, it is noted, exceeds the anticipated maximum use to be provided as a project purpose by 680,000 visitor-days, or 68 percent. Even if facilities were developed to maximum levels to accommodate 6,000,000 visitor-days of use annually, the land acquisition proposal would provide in excess of one-quarter acre per visitor per day of use.

In making this judgment we recognize that there can be no firm guidelines which will dictate land requirements based upon anticipated visitor use. There are many variables such as access, terrain, type of use, type of facilities, management unit decisions, etc., which greatly affect the amount of land necessary to accommodate anticipated development and use. We also recognize that if the Dos Rios Reservoir were to be developed as a national recreation area there are certain standards and criteria which must necessarily guide development. We believe, however, that the entire matter of recreational development beyond that envisioned in the adopted plan is in need of additional study and evaluation before definite conclusions can be reached.

In actuality, preliminary recreation plans have been formulated by the Corps of Engineers for three separate levels of recreational development. The first, which has been called the National Recreation

Area Plan, involves the most extensive development and would accommodate 6,000,000 visitor-days of recreation use annually as a project purpose in addition to the 1,000,000 visitor-days of use projected for Indian lands. If the reservoir were developed under this plan, the Corps projects that 14,000 acres of land would be required for the planned development. Most would be acquired from private landowners in the project area.

The Corps estimates that the development of facilities under the National Recreation Area Plan would cost about \$31,600,000. Construction of such facilities would be phased over a period of years and would occur as increasing recreation demand dictates. Initial development is estimated to cost about \$10,900,000 with additional development to take place at approximately 10-year intervals. The average annual cost of these facilities is \$1,760,000 including operation, maintenance, and replacement costs of \$1,040,000. The corps has estimated the annual benefits for this level of development at \$2,560,000.

Full development under the 1965 Recreation Act Plan would be governed by the Federal Water Project Recreation Act (P.L. 89-72) which requires nonfederal interests to bear one-half of the separable recreation costs and all costs associated with the operation and maintenance of the recreation facilities. The federal government assumes the remaining one-half of the separable recreation costs and all of the joint costs allocated to the recreation function.

Development in accordance with this plan would accommodate 5,000,000 visitor-days of use annually as a project function in addition to the 1,000,000 visitor-days annually to be accommodated on Indian lands as a mitigative measure. This plan, as was the case with regard to the National Recreation Area Plan, would involve the acquisition of some 14,000 acres of land for recreation purposes.

The cost of recreation facilities developed under this proposal would be about \$28,000,000 with approximately \$10,900,000 being required for initial development. Additional development would take place at approximately 10-year intervals with the first incremental development estimated to cost \$8,450,000. The average annual separable cost, including costs of operation, maintenance, and replacement, is \$1,590,000, while the estimated benefits are \$2,520,000.

While the development of initial and incremental recreation facilities under this plan are the same as for the National Recreation Area Plan, the National Recreation Area Plan would provide for a higher level of ultimate development with attendant increases in total capital and annual costs. Likewise, project benefits attributable to this function also increase.

If recreation facilities at the Dos Rios Reservoir are developed at levels beyond those set forth in the adopted recreation plan and increased benefits accrue as a result of such development, the costs of the project should be re-allocated to properly reflect the benefits derived from each project function.

It is the committee's belief that the broadest benefit from the proposed Dos Rios Project can be attained only if the project associated recreation facilities are developed within the framework of the Federal Water Project Recreation Act. This act not only permits a federal contribution toward the capital cost of the separable recreation facili-



ties but also provides substantial benefit to other project beneficiaries through federal assumption of all of the joint costs of the project allocated to recreation.

In this regard, it is noted that a "letter of intent" to participate financially and operationally in the recreation aspects of the project must be issued by a nonfederal agency prior to project authorization. In the absence of such an indication of intent, the Corps of Engineers would be precluded from providing facilities or project modifications which would provide recreation benefits except for minimum facilities necessary for the public health and safety. The nonfederal agency, additionally, must enter into a formal agreement prior to the commencement of project construction.

Regarding the Dos Rios Project, there are two nonfederal public agencies which, logically, could issue the required letter of intent—the County of Mendocino and the State of California. The County of Mendocino, however, is not interested in assuming the nonfederal responsibility under Public Law 89-72, nor, as a practical matter, are they in a financial position to undertake such a large fiscal obligation. Therefore, it appears that if recreation is to be included as a purpose of the Dos Rios Project, it will be necessary for the State of California to assume the nonfederal responsibility under Public Law 89-72. It is noted, however, that the Director of the Department of Parks and Recreation feels that the Dos Rios Project is not attractive recreationally and that there are recreation projects of higher priority upon which the state should invest the limited funds annually available for capital outlay purposes.

In this regard, it is noted that under Public Law 89-72 the State of California will not be required to actually fund the capital cost of the separable recreation facilities. Rather, this cost will be funded by the Corps of Engineers with one-half the cost to be subsequently repaid by the State of California over the project payout period. Therefore, the capital outlay budget of the Department of Parks and Recreation will not be affected by the state participation in the recreational aspects of the project. The department will, however, be required to fund operation, maintenance, and replacement costs as a part of its operating budget.

The Dos Rios Project, additionally, is somewhat unique in terms of its status as a water supply project as well as in terms of cooperative project planning and development. This unique status, we believe, has a significant bearing upon the responsibility of the State of California in supplying project associated recreational facilities.

In considering the appropriateness of the State of California's assuming the nonfederal responsibility under Public Law 89-72, it must be remembered that the Dos Rios Project, while being constructed by an agency of the United States government, is, in reality, an integral part of the California State Water Project. The Upper Eel River development was, in fact, adopted by the Director of the Department of Water Resources on March 9, 1964, as the first additional project to be constructed as a part of the State Water Resources Development System under the Burns-Porter Act.

We believe it is extremely important to note that if the Dos Rios Project were constructed by the California Department of Water Re-



sources, it would be subject to the provisions of the Davis-Dolwig Act,\* which requires the development of recreation facilities as a part of the project.

This act, which is a California statute essentially comparable to the Federal Water Project Recreation Act, requires that recreation and fish and wildlife enhancement be included as purposes of all state-constructed water projects. It further requires that necessary lands be acquired and facilities be constructed and available for public use at the time each project is completed. Under the act, lands for recreation purposes are acquired by the Department of Water Resources as a part of their land acquisition program for other project purposes and separable facilities are constructed by the Department of Parks and Recreation with funds provided as a part of the department's annual capital outlay budget.

As a practical matter, the unique circumstances which surround the planning and development of the Dos Rios Project must dictate the State of California's approach to project recreational development. The project is, in reality, a part of the State Water Project regardless of the agency that has responsibility for its construction.

It is, therefore, our conclusion that the policy of the State of California with regard to the planning and development of recreation and fish and wildlife enhancement facilities at state-constructed water projects as set forth in the Davis-Dolwig Act should be applied to the Dos Rios Project and that the costs associated with such development are a proper responsibility of the State of California.

It is also our conclusion that the most efficient and most economic means of accomplishing necessary recreation development at the Dos Rios Project is through the application of the Federal Water Project Recreation Act.

We, therefore, recommend that the State of California assume the nonfederal responsibility under Public Law 89-72 and that the Public Resources Code be amended to automatically authorize such participation at all federal water projects which are constructed as a part of the State Water Resources Development System and for which the State of California contracts for the conservation yield.

In discussing responsibility for the financing and management of recreation facilities at federal water projects, it should be pointed out that the Federal Water Project Recreation Act specified that such costs and responsibilities are nonfederal "... unless such areas or facilities are included or proposed for inclusion within a national recreation area, or are appropriate for administration by a federal agency as a part of the national forest system, as a part of the public lands classified for retention in federal ownership, or in connection with an authorized federal program for the conservation and development of fish and wildlife."<sup>6</sup>

The United States Bureau of Land Management has extensive holdings in the area of the Dos Rios Reservoir which have been classified for retention in federal ownership and which are presently being managed by the Bureau for various purposes, including recreation, wildlife, fisheries, timber, livestock, and mineral production.

\* Water Code Section 11900 et seq.

<sup>6</sup> Section 1, Public Law 89-72.

In a recent report on the Dos Rios Project, the Bureau of Land Management recommended that the "administration of all resources, including recreation and wildlife mitigation on public domain and acquired lands be vested in BLM, excepting Indian lands, the Covelo townsite, lands specifically needed and used for project purposes, and National Forest Lands."<sup>7</sup>

The Bureau proposal appears quite logical in view of their present land holdings in the area and we concur with the Bureau recommendation if such lands indeed are found to be suitable for federal administration as a part of the public lands which have been designated for retention in federal ownership. While federal administration appears to be most desirable from a management point of view and also fiscally in terms of the interests of the State of California, we would again emphasize that should federal administration of project land and water areas for recreation not be forthcoming, the State of California has the obligation to assume that responsibility.

### *Hydroelectric Power*

The Corps of Engineers has included a small hydroelectric powerplant with a capacity of 4,800 kilowatts as a part of the Dos Rios Project. This plant would utilize only the releases which will be made downstream for fisheries purposes, thus power development is a relatively minor part of the project.

The Corps investigated the possibility of developing pumped storage hydroelectric power generation at Dos Rios, but the investigation revealed that the high cost of constructing an afterbay downstream from the dam would make such development economically infeasible.

### REQUIREMENTS OF THE STATE WATER PROJECT

In order to fully understand the purpose of the proposed Dos Rios Dam and Reservoir, it is necessary to understand the operation of the State Water Project and its interrelationship with water development and use in areas tributary to the Sacramento-San Joaquin Delta.

The Sacramento-San Joaquin Delta is a vast area of about 738,000 acres located at the confluence of the Sacramento, San Joaquin, and Mokelumne Rivers through which nearly all waters originating in the Central Valley Basin drain to San Francisco Bay and the Pacific Ocean.

The Delta, because of its location, plays a key role in the transfer of water for both the U.S. Bureau of Reclamation's Central Valley Project and the California State Water Project. Both projects pump water directly from the Delta for transfer to areas of deficient supply and are, therefore, dependent upon the availability of ample quantities of fresh water in the Delta.

The State Water Project has been designed to provide basic water supplies of 4,230,000 acre-feet annually, which is the total amount of water the state is obligated by contract to deliver. Water to meet this commitment is obtained from the conservation facilities of the Oroville Dam on the Feather River and the San Luis Dam, which is an off-

<sup>7</sup> Preliminary Impact Study Report for the proposed Dos Rios Project, U.S. Department of the Interior, Bureau of Land Management, California State Office, October 1968, p. 46.

stream storage facility in the San Joaquin Valley designed to reregulate the flow of water in the Delta.

The availability of water in the Delta is, of course, affected by many factors, including annual runoff, releases from storage, and water use in the Central Valley Basin. As water use for municipal, industrial, and agricultural purposes increases in areas tributary to the Delta in future years, the quantity of surplus water reaching the Delta will decrease, thereby reducing the amount of water available for transfer to meet deficiencies in areas served by the state and federal water projects.

This means, therefore, that during the same period of time deliveries of water from the State Water Project are growing, the availability of surplus water to meet those requirements is decreasing due to increased use of water in tributary areas. Present departmental projections indicate that the demand for water from the State Water Project will increase from 322,000 acre-feet annually in 1970, to 2,243,000 acre-feet in 1980, 4,194,000 in 1990, and to the full project entitlement of 4,230,000 acre-feet by the turn of the century.

Departmental projections also indicate that, based upon the anticipated buildup in the demand for water from the State Water Project and upon expected increases in water use in areas tributary to the Delta, additional water must be made available in the Delta by 1986 to meet the water delivery requirements of the State Water Project.

It should be noted, however, that it is impossible, as a practical matter, to predict precisely the time at which additional water will actually be required. This imprecision results from the fact that it is equally impossible to *precisely* predict either the rate of buildup in demand for state project water or the rate of increase of water use in areas tributary to the Delta.

Should either accelerate at a more rapid pace than is anticipated, additional water could be required at an earlier date. On the other hand, if the buildup is not as rapid as is anticipated in departmental studies, additional water would not be required as early. One thing is clear, however, and that is that additional water will be required to fulfill the state's present contractual commitments.

Based upon anticipated growth rates, the departmental projections show that the State Water Project will require additional water in the amount of 900,000 acre-feet annually by 1990. The director has noted, however, that this quantity of water will not be necessary each year of project operation. Rather, it is the requirement of the project based upon the availability of water during the historic dry period of record from 1928 to 1934 and is the amount of water which would be necessary to keep the State Water Project whole should such a period recur.

It should also be pointed out that during the formulation of the State Water Project and during consideration of legislation authorizing the project by the Legislature it was undersood that water developed by the initial project conservation facilities at Oroville and San Luis would not be sufficient to meet project delivery requirements on a continuing basis.

It was for this reason that the so-called "bond offset" provisions were included in the Burns-Porter Act when it was passed by the Legislature. Under those provisions bonds authorized by the act are



reserved in amounts equal to expenditures made on the initial project facilities (State Water Facilities) from the California Water Fund. These reserved bonds may be expended only "... for the construction of such additional facilities of the State Water Resources Development System as the department shall determine to be necessary and desirable to meet local needs, including, but not restricted to, flood control, and to augment the supplies of water in the Sacramento-San Joaquin Delta from multiple purpose dams, reservoirs, aqueducts, and appurtenant works in the watersheds of the Sacramento, Eel, Trinity, Mad, Van Duzen, and Klamath Rivers for use in the State Water Resources Development System . . ."<sup>8</sup>

The Department of Water Resources, prior to selecting the Dos Rios Dam and Reservoir as the first additional facility, conducted studies of various other projects, including additional reservoirs within the Central Valley Basin and the possible development of other streams on the north coast of California.

The Dos Rios Project, as it has been proposed by the Corps of Engineers, has been designed to meet the projected deficiency in supplies available to the State Water Project in the amount of 900,000 acre-feet of water each year. It should be understood that the present plan of development and operation for the Dos Rios Reservoir is keyed to the needs of the State Water Project during such a period. Annual diversions from Dos Rios into the Central Valley would vary from zero to a high of 1,300,000 acre-feet.

The project, as presently conceived, will simply provide the additional amount of water required to keep the California Aqueduct flowing at design capacity which, of course, is necessary if the State of California is to fulfill existing water supply commitments.

It is particularly important to note that, if it were not for the present agreement whereby the Corps of Engineers will construct the Dos Rios Dam and Reservoir and the Department of Water Resources the conveyance facilities, the State of California would be unable to build the project without seeking additional funding. The principal advantage for the State of California under the present agreement with the Corps is that the state will be able to obtain the water supply necessary to meet the long-term requirements of the State Water Project without having to fund the capital cost of the conservation facilities. Additionally, interest charged under the Water Supply Act of 1958 is less than the current interest rate on general obligation bonds issued by the State of California. There are, however, other problems associated with the proposed state-federal arrangement which are discussed in the report of our engineering consultants.

The basic need of the State Water Project for additional water is often not appreciated by the layman, and it is easy to lose sight of the importance of such additional supplies when the need for the water is not immediate. The committee, however, must concern itself with the larger interests of California. We cannot be content with the narrow view but must undertake the more difficult task of weighing the equities.

During our October 17 hearing, a Department of Water Resources memorandum report entitled "Present and Future Water Supply and

<sup>8</sup> Water Code Section 12938.

Demand in the South Coastal Area" was cited to support a contention that the Dos Rios Project is unnecessary. This report indicates "... that present and future local and imported water supplies (in the south coastal area) are sufficient to meet the supplemental water demand to 2000."<sup>9</sup>

It is easy to see how such a statement could lead the average layman to the conclusion that an additional project to supply water for the State Water Project might be unnecessary. In actuality, the statement is totally consistent with all that has been said in support of the Dos Rios Project, and, in fact, itself supports the authorization and construction of the project.

The department's conclusions regarding water supply and demand in the south coastal area are predicated upon the importation of the area's full entitlement of water from the State Water Project in addition to local development and other importation projects. Simply stated, that entitlement cannot be delivered unless an additional 900,000 acre-feet of water is made available for purposes of the State Water Project.

Some concern was expressed at our October 17 hearing that the above mentioned report on water supply and demand had not been printed and made available for public distribution by the Department of Water Resources. The department's analysis of water supply and demand in the south coastal area, which was prepared as an internal document, is simply a part of the department's continuing assessment and reassessment of water demand and of alternatives to meet those demands. Such analyses are vital to the department's planning program and are essential if we are to meet our growing water demands in an efficient and timely manner.

## ALTERNATIVES TO THE DOS RIOS PROJECT

### *Introduction*

The Corps of Engineers' proposal to construct a "high" dam at Dos Rios has engendered considerable opposition principally from residents of Round Valley, which would be inundated by the reservoir to be formed behind the dam. The opponents of the high dam have asserted that there are practical alternatives to Dos Rios which could meet the needs of the State Water Project and have contended that the dam is unnecessary in view of the alternatives that are presently available.

Alternatives suggested include other conventional water development, salt water conversion, waste water reclamation, and weather modification. Conventional development would, of course, have to be a substitute for the Dos Rios Project and not simply a readjustment of project construction scheduling.

Certainly the inundation of areas such as Round Valley during the development of water supply projects must be avoided if at all possible. This, however, is not always possible when developing water supplies to meet the needs of a growing state. It has, therefore, been necessary for the committee to examine the available alternatives to Dos Rios in order to satisfy ourselves that there is, in fact, no practical alternative. We have directed our engineers to explore possible alterna-

<sup>9</sup> "Present and Future Water Supply and Demand in the South Coastal Area," Memorandum Report, Department of Water Resources, p. 89.



tives, including alternative project configurations which would avoid flooding Round Valley and operating criteria.

### *Conventional Development*

The most reasonable possibility for providing the 900,000 acre-feet of additional water required for the State Water Project would obviously be an alternative conventional water supply project, preferably located within the Central Valley Basin. At our October 17 hearing, Director of Water Resources Gianelli explained in some detail the department's investigations and analyses of such projects as possible alternatives to Dos Rios. The director's statement, which included the present status and disposition of water from each of these projects, is summarized briefly below.

The director, for purposes of his presentation, broke possible development into three major categories: (1) authorized or planned reservoirs which are to be a part of the U.S. Bureau of Reclamation's Central Valley Project, (2) possible multipurpose reservoirs which are not dedicated to the Central Valley Project, and (3) offstream storage development which could be utilized to store surplus runoff.

There are presently several major water development projects which are either authorized or planned for dedication to the Bureau's Central Valley Project. These reservoirs, which are indicated in Table I, have a combined storage of 9,041,000 acre-feet and an annual yield totaling 1,500,000 acre-feet. Of this amount, 815,000 acre-feet is dedicated to the East Side Division of the Central Valley Project, 155,000 acre-feet to the West Sacramento Canal service area, 140,000 acre-feet to the Cosumnes Division, and 390,000 acre-feet to the service area of the Folsom South Canal. None of the water developed by these projects is available for use in the State Water Project.

TABLE I  
Authorized and Proposed Projects Dedicated to  
the Federal Central Valley Project

Project	Storage	Yield	Service area
Authorized projects			
Auburn.....	2,500,000	390,000	Folsom South Canal
New Melones.....	2,400,000	295,000	East Side Division
Marysville.....	1,000,000	120,000	East Side Division
Proposed projects			
Nashville.....	900,000	140,000	Cosumnes Division
Sites.....	1,200,000	155,000	West Sacramento Canal
Hungry Hollow.....	800,000	400,000	East Side Division
Montgomery.....	241,000	(combined)	East Side Division

There, additionally, are several possibilities for the development of multipurpose reservoirs within the Central Valley drainage basin the conservation yield of which could contribute to meeting the projected deficiency in the State Water Project. These are Wilson Valley, the Dutch Gulch and Farquhar School Reservoirs which are a part of the Corps of Engineers Cottonwood Creek Project, the Paskenta-Newville Project, and the Rancheria Dam and Reservoir.

TABLE II  
**Proposed Projects Within the Central Valley Basin  
 With Undedicated Service Areas**

Reservoir	Stream	Storage, acre-feet	Yield, acre-ft./yr.	Storable inflow, acre-ft./yr.	Years to fill
Wilson Valley-----	Cache Creek-----	1,000,000	100,000	192,000	6
Dutch Guleh-----	Cottonwood Creek-----	1,000,000	151,500	230,000	4
Farquhar School-----	Cottonwood Creek-----	900,000	107,000	140,000	7
Paskenta-Newville--	Thomes, Stony Creeks	3,120,000	343,000	160,000	25
Rancheria-----	Stony Creek-----	4,200,000	500,000	172,600	35

The department has expressed an interest in participating in the development of the Cottonwood Creek reservoirs and the Paskenta-Newville Project as possible sources of supplemental water supplies for the State Water Project. They note that the Bureau of Reclamation is also interested in these projects as potential sources of water supply to meet future needs of the Central Valley Project.

The department points out, however, that the Cottonwood Creek reservoirs and the Paskenta-Newville Project cannot be considered as true alternatives to the Dos Rios Project. The two reservoirs on Cottonwood Creek will develop a yield of 232,000 acre-feet annually and the Paskenta-Newville Project 300,000 acre-feet based upon coordinated operation with the Central Valley Project and the use of local inflow only.

The combined yield of both projects would supply only 532,000 acre-feet of the 900,000 needed by the State Water Project. Additionally, the Paskenta-Newville Reservoir, as noted above, will require 25 years to fill and the department doubts that it could be in operation in time to meet State Water Project requirements. The department further points out that both projects will be needed to meet increasing water demand even if the Dos Rios Reservoir is constructed and that "the only sense in which these projects can be considered alternatives to Dos Rios is in the sequence of construction. Should Paskenta-Newville and the Cottonwood Creek Projects be constructed prior to Dos Rios, their combined yield would defer the need for Dos Rios for only five years, assuming *all* exportable yield of the Paskenta-Newville and Cottonwood Creek Projects could be dedicated to the State Water Project service areas."<sup>10</sup>

The remaining two major projects within the Central Valley Basin are the Wilson Valley Reservoir on Cache Creek and the Rancheria Reservoir on Stony Creek. These reservoirs develop 100,000 and 500,000 acre-feet of yield, respectively. The yield of the Wilson Valley Reservoir is proposed for local use in the Cache and Putah Creek areas with no yield being available for export. The Rancheria Reservoir has been proposed mainly to provide storage within the Central Valley Basin for water developed on the north coast.

If the Rancheria Reservoir were constructed to a capacity of 4,200,000 acre-feet, as has been proposed, and only local flows were used, it

<sup>10</sup> Statement of William R. Gianelli, Director, Department of Water Resources, before the joint hearing of the Senate Committee on Water Resources and the Assembly Water Committee, October 17, 1968, pp. 8-9.

would require 35 years to fill the reservoir. Again, as was the case with regard to the Paskenta-Newville Project, the reservoir could not be completed, filled, and in operation in time to furnish additional supplies to the State Water Project when they are needed.

Based upon the above data, it can be seen that the remaining possibilities for major multiple-purpose reservoirs within the Central Valley Basin will not only fail to supply water in the quantity required at the time it is needed but that such projects are not truly alternatives to the Dos Rios Project due to the fact that they will be required in the future to meet increasing water demands.

The third category of potential development discussed by the director were possibilities for offstream storage within the Central Valley Basin. The three reservoirs mentioned—enlargement of Lake Berryessa, Los Banos Reservoir, and Los Meganos Reservoir—would simply regulate flows presently originating within the Central Valley. They, therefore, would not add new water to the flows presently reaching the Sacramento-San Joaquin Delta. It was also the department's conclusion that the cost of developing additional water from these sources would be considerably greater than the cost of water developed by the Dos Rios Project.

### *Desalination*

The possibility of meeting the supplemental water requirements of the State Water Project through sea water conversion has been advanced by a number of individuals as an alternative to the Dos Rios Project. In evaluating salt water conversion we must necessarily consider not only the practicality of the approach in terms of technology or the "state of the art" but in terms of economics as well.

In terms of technology, it does not appear that the state of the art is sufficiently advanced at this time to consider salt water conversion an alternative to the Dos Rios Project or most other conventional water development proposals. The State Water Project will require 900,000 acre-feet of additional water annually, yet the more than 600 existing salt water conversion plants throughout the world provide a total annual yield of only 220,000 acre-feet. The largest existing plant has a capacity of only 8,000 acre-feet per year.

The largest facility proposed to date was the dual purpose nuclear desalting-generating project at Bolsa Island, which was to be a joint venture of the Metropolitan Water District of Southern California and several southern California utilities. The proposed desalination plant would produce 150,000,000 gallons of fresh water per day or approximately 150,000 acre-feet per year. This project is presently being "restudied" but for all practical purposes has been delayed due to rising prices and necessary design modifications.

Assuming that dual purpose plants with a capacity of this magnitude could be constructed as an alternative to the Dos Rios Project, six plants with a capacity of 150,000,000 gallons per day would be necessary to provide the 900,000 acre-feet of water required each year by the State Water Project. While sea water conversion plants with capacities up to 1,000,000,000 gallons per day, or about 1,000,000 acre-feet per year, are being mentioned, little or nothing of the technological knowhow required for construction and operation is presently

available. Additionally, nothing is known of the economies of such plants.

A brief look at the economic aspects of sea water conversion plants is perhaps more enlightening than a discussion of plant capability. The total cost of the dual purpose nuclear desalination-generating plant proposed by the Metropolitan Water District, including cost escalation to the time of completion, is estimated to be in the neighborhood of \$765,000,000. Of this amount, \$278,000,000 was allocated to the sea water conversion portion of the project, including conveyance facilities.

It should be noted that the Department of Water Resources has considered the possibility of using desalination as an alternative to the Dos Rios Project. However, simple economies indicate that desalting does not in fact provide an alternative.

At this committee's hearing on October 17, the Department presented a cost comparison for water developed by the Dos Rios Project and through sea water conversion. Data presented indicated that the yield of the State Water Project could be maintained with water from the Dos Rios Project at an incremental cost of about \$26 per acre-foot while the cost of desalted water, based upon Metropolitan's Bolsa Island Project, would be in the area of \$120 per acre-foot. These estimates do not take into consideration savings in the variable transportation costs of the California Aqueduct or the cost of transportation facilities which would be necessary to place the desalted water in use. These, however, would be offsetting and would not affect the cost comparison.

The department, however, was criticized for measuring the incremental cost of Dos Rios water and desalination at the delta. Subsequent to our hearing, the committee requested that the department prepare cost comparisons of the two alternatives referenced to the probable point of use.

In a letter to Chairman Gordon Cologne, dated December 4, 1968, the department made the following comparison:

"In my statement to your committee on October 17, this comparison was measured at the delta, since the bulk of State Water Project deliveries will be made from that point via the California Aqueduct. Should desalters be selected to maintain the presently contracted supply of the initial State Water Project in lieu of Dos Rios Reservoir, the desalting complex would, of course, in all probability be located along the southern California coast.

"The comparative cost between Dos Rios and desalination would, however, remain basically the same regardless as to whether the point of comparison is the delta or southern California. This is because the estimated *incremental* cost of conveying water via the California Aqueduct from the delta to service areas south of the Tehachapis is almost exactly the same as the *total* cost of the conveyance facilities required to move the desalted water from a conversion site at sea level on the south coast to the distribution system headworks of the water agencies concerned. The annual cost of water transportation in each case is estimated to be in the order of \$10 to \$15 per acre-foot.

"To change the point of reference from the delta to southern California the above transportation charges would be additive to both the at-site cost of a desalter and to the cost of Dos Rios Reservoir water



supplies measured at the delta. You will recall that the latter estimates were presented in my October 17 statement as \$120 per acre-foot for desalting, based upon assumed mid-1970 technology and \$26 per acre-foot for Dos Rios water supplies, including transportation to the delta.

"The net effect of comparing the cost of Dos Rios water in southern California with desalted water in southern California is shown on the following tabulations.

	<i>Cost per acre-foot</i>
"Dos Rios water in the delta -----	\$26
Net transportation cost (pumping less power recovery) -----	10
Total Dos Rios water in southern California -----	\$36
Desalted water cost along the coast -----	\$120
Transportation cost to service area inland -----	10
Total cost of desalted water -----	\$130

"You will note that the difference in estimated cost in favor of Dos Rios Reservoir is the same as indicated in my October 17 statement to your committee."

The sea will someday undoubtedly be the source of major water supplies for municipal, industrial, and, some think, even agricultural purposes. Technological advances, coupled with the fact that it is becoming necessary to transport surface supplies further and further, will make the conversion of large amounts of sea water both practical and economical.

At this point in time, however, we have not as yet attained a level of technological competence which permits the sea to be counted upon as a major source of fresh water. We cannot, therefore, depend upon expected technological advances when planning facilities to meet the water requirements of the people of California. While desalination, without question, offers great potential in meeting future requirements for additional water, it cannot at this time be considered as a substitute for conventional water development.

### **Waste Water Reclamation**

The reclamation and reuse of waste water has also been suggested as a possible alternative to the Dos Rios Project. As the demand for water increases, we must certainly make the fullest use of our available resources.

It is the general consensus of experts in the field, however, that the reclamation of water for reuse will constitute only supplementary supplies and cannot be considered as an alternative to conventional development. In commenting upon the role of waste water reclamation, John D. Parkhurst, Chief Engineer of the County Sanitation Districts of Los Angeles County, stated that "It is important to know that waste water reclamation for reuse can only supplement and not really substitute for a good basic water supply. This is because the better the quality of the basic water, the more opportunity you have to reuse this water . . . " <sup>11</sup>

The Department of Water Resources, in projecting future demand for water in the south coastal area and in planning for the develop-

<sup>11</sup> "Waste Water Reclamation and Reuse," Transcript of Proceedings, Assembly Water Committee, December 6, 1965, p. 57.



ment of facilities to meet that demand, takes waste water reclamation into consideration. The development of facilities to meet projected demand is, therefore, predicated upon a portion of that demand being fulfilled through the reclamation and reuse of waste water.

Present projections by the department indicate that 200,000 acre-feet of waste water will be reclaimed and reused in the south coastal area by the year 2000. Reuse will build up slowly over a period of years and will reach approximately 300,000 acre-feet annually by the year 2020.

While waste water can be reclaimed and reused, even for human consumption, and while there is a growing public acceptance of waste water reuse, there nevertheless are substantial social and political problems which must be overcome before large-scale reclamation and reuse can be accomplished.

In general, ordinary sewage is relatively easy and inexpensive to reclaim. However, water obtained through most reclamation efforts to date has been principally used for ground water basin recharge, salt water intrusion barriers, irrigation of parks, golf courses and agricultural lands, recreational reservoirs, and for industrial use.

It should also be pointed out that the use to which reclaimed water will be put dictates the degree of treatment required and, therefore, the cost of reclamation. If reclaimed water were to be used for human consumption, the degree of treatment required would materially increase the cost of the treated water.

In any event, it seems obvious that waste water reclamation and reuse does not constitute an alternative to the development of conventional water supply projects and, in particular, the Dos Rios Project.

#### **Weather Modification**

The possibility of increasing available water supplies through weather modification has also been suggested as an alternative to the Dos Rios Project.

The scientific community, however, is just beginning its investigation of weather modification, and little is known of what can be accomplished or how it is to be done.

While we may one day be able to increase our basic water supply by weather modification, that day is not yet here. Certainly we cannot plan to meet our known water requirements from as yet undeveloped sources.

Those who suggest such alternatives appear, in our judgment, to be attempting to cloud the real issues in an effort to scuttle the Dos Rios Project. Such suggestions simply cannot be taken seriously.

#### **GEOLOGIC CONDITIONS**

A number of individuals appearing before the committee in opposition to the Corps of Engineers' proposal to construct a high dam at Dos Rios have cited the generally unstable geologic conditions of the area which are basically characteristic of the entire Coast Range.

Several opponents of the project, including individuals with technical competence in the field of geology, have asserted that the Franciscan formations which underlie the greater portion of the Eel

River drainage are basically incompetent to support large dams and have pointed out that geologic investigations conducted to date by the Department of Water Resources and the Corps of Engineers are not sufficiently detailed to support the conclusion that a large dam can be constructed at the Dos Rios site as proposed.

They specifically point out that there are numerous fractures in the area of the damsite which could cause a failure and further assert that the instability of the general geology of the area could result in a massive land movement into the reservoir area, such as occurred at Vaiont Reservoir in Italy, with the resultant overtopping of the dam.

The questions of damsite geology and massive earth movement into the reservoir area are actually two separate problems, even though both relate to the geology of the area. As a practical matter the geology of any given damsite could be perfect for the construction of a large dam while the geology of the reservoir area presented the possibility of large rapid earth movement into the reservoir. Likewise, the opposite could occur. We, therefore, will deal with each of these problems separately in this report.

With regard to the ability of the Franciscan formations to support large dams, the Department of Water Resources points out that large dams can be constructed on such formations and that there are, in fact, some 71 dams in California under the jurisdiction of the Department's Division of Safety of Dams which have been constructed on Franciscan rocks and are functioning safely. Therefore, it can readily be seen that, while the Franciscan formations are basically unstable, they are competent to support dams under certain circumstances.

It should be pointed out that both the Department of Water Resources and the Corps of Engineers agree that additional geologic, soils, and foundations investigations are necessary. The problem with regard to the geology of the Dos Rios damsite appears to be more a matter of timing than of fact. Those who have opposed the Dos Rios Project upon the basis that sufficient detailed geologic investigations have not been conducted to warrant the conclusion that a dam can be constructed at the Dos Rios site appear to fail to appreciate the sequence in which work is conducted during the formulation, design, and construction of a water project.

The Dos Rios Project is currently at the "survey report" or "feasibility report" stage. Certainly a great deal of work remains before the project can be constructed. Perhaps the best explanation of the survey report, the sequence of investigation, and the present status of the Dos Rios Project is the following statement made by Colonel Frank C. Boerger at our October 17 hearing: "The purpose of any survey report is to make an evaluation of the associated water resources problems of the areas under consideration, both present and projected future, to formulate a plan or plans which result in the best overall economic solutions of the problems and to determine the economic justification of the selected plan.

"The survey report, in essence, is a feasibility report as such field-work, office studies, analyses and investigations, and designs and details are held to the level necessary to arrive at definite and reasonable conclusions regarding the need for and magnitude and basis for adoption of the selected project, including its costs, benefits, and con-

elusions and recommendations regarding the adoption of the project by Congress.

"It is only after a project has been authorized and funds are appropriated for advanced engineering and design that we undertake the more extensive field explorations, testing, designs, and analyses which are required for developing the necessary factors and controlling criteria for identifying each feature of the project in detail.

"We certainly do not take issue with the comments which have been made as to the need for additional geologic, soils, and foundations investigations, sampling and testing before construction of the dam is undertaken. Differences apparently arise from the point in time of project status that such extensive work is to be undertaken.

"We consider that adequate information and evaluations have been made to arrive at conservative designs and cost estimates for the Dos Rios Project for survey report purposes."

With this statement, we agree. One can find little logic or justification for the expenditure of millions of dollars for detailed engineering studies on a project which is not yet authorized. Certainly, logic dictates that such studies occur during the postauthorization period and that only those studies required to determine project feasibility be conducted during the preauthorization or feasibility report period.

In discussing the geology of the Dos Rios damsite, it should be pointed out that studies conducted to date indicate "the conditions that have been found at Dos Rios are no worse than those that have been encountered and described at other damsites where safe and watertight dams were subsequently built."<sup>12</sup>

It should also be made clear that the presence of cracks or fractures at a damsite do not necessarily present insurmountable engineering problems which would preclude the construction of a dam. In such instances, "the fractured near-surface rock is removed from the site during foundation preparation" and "deep-seated cracks are sealed by injecting cement grout . . ."<sup>13</sup>

With regard to the possibility of a sudden massive landslide which would cause an overtopping of the dam, the Department of Water Resources has been conducting studies of possible landslide areas along the Middle Fork of the Eel River and has retained two nationally known consultants to provide technical guidance for their studies.

The consultants, Dr. Stanley Wilson and Professor George Kiersch, who conducted a study of the previously mentioned Vaiont Reservoir disaster in Italy, both "express the opinion that conditions are not present at the Middle Fork Eel River project for a sudden, catastrophic landslide."<sup>14</sup>

It appears to the committee that arguments in opposition to the Dos Rios Project based upon the geologic conditions of the area are specious. It also appears that the investigations conducted by both the Department of Water Resources and Corps of Engineers have been more than adequate considering the present status of the project.

In our opinion, there is no basis for questioning the technical ability of either the Department of Water Resources or the Corps of Engineers in the study, design, and construction of water projects. Engineers

<sup>12</sup> Statement of William R. Gianelli, *op. cit.*, p. 24.

<sup>13</sup> *Ibid.*, p. 24.

<sup>14</sup> *Ibid.*, p. 24.



of the Department of Water Resources have designed and constructed the largest earthfill dam in the world at Oroville. The credentials of the Corps of Engineers in dam design and construction need not be presented here.

It is inconceivable to this committee that either agency could or would recommend construction of a project which they feel might be unsafe. Accusations to this effect simply do not make good sense and serve only to attack the credibility and motives of the accusers.

## FISH AND WILDLIFE MITIGATION-ENHANCEMENT

### *Introduction*

It is readily acknowledged that the Dos Rios Project will have a significant impact upon the existing fish and wildlife resources of the Middle Fork Eel River area. The Dos Rios Dam, which will be located approximately two miles upstream from the confluence of the Middle Eel with the Main Eel, could, unless appropriate mitigation measures are taken, have a generally detrimental impact upon these resources. In fact, without appropriate mitigation measures, the dam could effectively destroy the entire anadromous fishery contributed by the Middle Fork of the Eel River.

The Dos Rios Project will also have a significant impact upon the wildlife resources of the area. The large area which will be inundated by the reservoir presently supports a wide variety of wildlife. While this loss of habitat will have an adverse effect upon all wildlife species, the most significant loss will occur in critical winter deer range.

The provisions of both state and federal law require the mitigation of project caused fish and wildlife losses and provide for the enhancement of fish and wildlife as a part of water projects. In connection with the Dos Rios Project measures for the mitigation of both fish and wildlife losses have been included in the Corps of Engineers' feasibility report.

### *Fisheries*

The United States Fish and Wildlife Service has proposed two measures which are designed to mitigate project associated fisheries losses. The first would be the construction of a salmon and steelhead hatchery, and possibly artificial spawning channels, to replace lost spawning areas upstream from the dam. The proposed hatchery is designed to assure the continuation of the Middle Fork Eel River's contribution to this important resource.

The second measure would provide for minimum releases of high quality water from storage to maintain suitable fish habitat in the Eel River below the Dos Rios Dam. Multilevel outlet works will be constructed in order to permit the release of water of proper temperature and clarity. The Department of Fish and Game and the U.S. Fish and Wildlife Service both agree that *minimum* releases of 200 cubic feet per second from June 1 to September 30 and 350 cubic feet per second from October 31 to May 31 will be necessary to accomplish the desired objective.

As noted above, the provisions of state and federal law require the complete mitigation of all project caused fish and wildlife damage as

a project cost. While the committee agrees wholeheartedly with this policy, we cannot judge either the adequacy or inadequacy of the proposals which have been made to mitigate fishery losses caused by the Dos Rios Project.

The mitigation measures which have been proposed must, as a practical matter, be considered preliminary inasmuch as the basic data essential to the development of proper mitigation measures is presently unavailable. As an example, data on salmon and steelhead runs are no more than estimates or "intelligent guesses." There have been no studies conducted to date to develop precise data on the salmon and steelhead runs in the Middle Fork of the Eel River.

Equally indicative of the lack of basic data is the present difference of opinion between the U.S. Fish and Wildlife Service and the California Department of Fish and Game as to the size of the hatchery to be constructed below the Dos Rios Dam. This difference comes about due to the fact that the lack of basic fishery data for the Middle Fork Eel River has made it necessary to size the hatchery upon the basis of data obtained from studies conducted of similar resources in other distant, completely different watersheds. Data which, we might add, may or may not be valid for the Eel River. It is indeed regrettable that such an important decision is being made on this basis.

We would again point out that a duty of care is owed the resources and the people of California by those agencies which propose, design, and construct projects such as Dos Rios. The valuable natural resources of the area can only be protected and enhanced through full consideration in project development and is essential beginning with the earliest stages of project planning.

We also believe that the proposed location of the anadromous fish hatchery is deserving of further study. The U.S. Bureau of Reclamation is presently studying the feasibility of the English Ridge Dam and Reservoir on the main Eel River upstream from its confluence with the Middle Fork. This dam, if constructed, will block anadromous fish runs on the main Eel River and will thus require the development and accomplishment of additional mitigation measures.

It appears to the committee that consideration should be given to the possibility of locating the proposed hatchery downstream from the confluence of the Middle Fork and main Eel River thus permitting the construction of a single hatchery to mitigate damage caused by both projects. The hatchery need not be initially constructed with a capacity sufficient to handle the anadromous fish runs of both streams. Rather, it need only be designed, constructed, and located in a manner which will permit expansion to accommodate fish runs blocked by the English Ridge Project when such becomes necessary.

We believe that the construction of a single hatchery to serve the needs of both projects might well result in substantial capital cost savings and thus provide benefits to both the Dos Rios and English Ridge Projects. This would also undoubtedly result in savings in operation, maintenance, and replacement costs.

We feel that additional fisheries studies are essential to the development of appropriate mitigative measures and, therefore, recommend the Corps of Engineers budget funds for such fisheries investigations as may be necessary to develop proper mitigation measures. These



studies should be undertaken as soon as possible and measures developed as a result of the studies incorporated into the project in a timely manner.

The Department of Fish and Game in January of 1966 published a report entitled "Fish and Wildlife Problems and Study Requirements in Relation to North Coast Water Development." While this report deals with fish and wildlife problems in the entire north coast region, it also deals specifically with problems in the Upper Eel River on pages 133-141 and sets forth the studies which the Department feels to be essential prior to undertaking water development in the area. To date, little, if anything, has been accomplished in the way of funding or carrying out these studies. They should be funded and completed at the earliest possible time.

In our 1967 Progress Report to the Legislature, we expressed concern over the timing and funding of necessary fish and wildlife studies in our north coastal area. In that report we pointed out that funds for vital fish and wildlife studies have been "negligible" and that the required studies are "sorely lacking."

We hoped at that time that the value of the anadromous fisheries to the north coast and to the state through their commercial and recreational use would be recognized and appropriate studies undertaken as a responsibility of those agencies proposing the construction of specific projects. Apparently our recommendations fell on deaf ears. Funds provided for fish and wildlife studies, simply stated, have been negligible in relation to funds expended on the engineering aspects of proposed projects. Dos Rios is no exception.

In regard to fishery studies, we note that no one has yet studied or even considered the possibility of providing fishery enhancement as a part of the Dos Rios Project. Why? Certainly the Dos Rios Project possesses potential for the enhancement of the salmon and steelhead runs in the Eel River. In our judgment, federal law requires that such studies be made as a part of project formulation. The Federal Water Project Recreation Act specifically states "... that it is the policy of the Congress and the intent of this act that (a) in investigating and planning any federal navigation, *flood control*, reclamation, hydroelectric, or *multiple-purpose* water resources project, full consideration *shall* be given to the opportunities, if any, which the project affords for outdoor recreation and for *fish and wildlife enhancement* and that, wherever any such project can reasonably serve either or both of these purposes consistently with the provisions of this act, it *shall* be constructed, operated and maintained accordingly..."<sup>15</sup> (Emphasis added.)

It appears to this committee that the Corps of Engineers has failed to comply with this specific requirement of federal law. It is our recommendation that fishery enhancement be included as a purpose of the Dos Rios Project and that funds immediately be provided to carry out studies necessary to determine the project's fishery enhancement potential. If, upon completion of such studies, it is concluded that the project can provide meaningful enhancement for the anadromous fisheries of the Eel River, it is our recommendation that appropriate enhancement measures be developed as a part of the project.

<sup>15</sup> Section 1, Public Law 89-72.

The benefits which would accrue as the result of including fisheries enhancement as a purpose of the Dos Rios Project are extremely important and should not be overlooked. We believe that those who support the authorization and construction of the project have a responsibility to assure that the project is designed, constructed, and operated in a manner which will afford the maximum possible benefit to the people of the north coast area. Certainly, the enhancement of the sport and commercial fishing industry of the area should be accomplished if the project affords the opportunity to create such benefits.

It should also be made abundantly clear that benefits would also accrue to the project's other beneficiaries through the inclusion of fish enhancement as a project purpose. This would occur due to the fact that project costs would be allocated over a greater number of purposes, thereby reducing the allocation to each function.

### *Wildlife*

Included in the Corps of Engineers' feasibility report on the Dos Rios Project is a proposal for the acquisition of approximately 16,000 acres of land for a wildlife area to mitigate the loss of habitat caused by the project.

We wonder whether such losses can in fact be mitigated. It is our understanding that the wildlife habitat of the area, particularly deer range, is presently being used to maximum capacity. Mitigation, therefore, will require increasing the carrying capacity of the land in order to absorb the wildlife which will be displaced by the Dos Rios Reservoir. If the carrying capacity cannot be increased, the wildlife displaced by the reservoir will be lost.

The Department of Fish and Game questions whether habitat destroyed by the project can be mitigated as proposed. In their judgment full mitigation will require at least 22,000 acres of developed, intensively managed habitat. They further point out that some off-site mitigation may well be required in addition to that proposed if the goal of full mitigation is to be accomplished.

The proposal for the acquisition of 16,000 acres for wildlife mitigation purposes has been criticized to some extent by those who feel that as little land as possible should be removed from the local tax base. This criticism, however, is not necessarily valid with regard to the wildlife mitigation proposal due to the fact that approximately 14,000 acres of the land proposed for the wildlife area are presently in public ownership under the jurisdiction of the United States Bureau of Land Management.

We agree with those who are concerned with the depletion of the local tax base and recommend that wildlife mitigation be accomplished to the extent possible and practical through the dedication and intensive management of lands which are already in public ownership. We recognize, however, that it will probably be necessary to acquire some private lands for such purposes in order to "round out" holdings and mold them into manageable units.

In summary, it appears to the committee that there is substantial need for additional fish and wildlife studies in connection with the Dos Rios Project. Such studies are essential not only for the development of appropriate mitigation measures but for enhancement measures as

well. Why fishery enhancement has not been studied and included as a project purpose is a mystery to the committee. We feel that the developers of the Dos Rios Project have an obligation to the people of California, and of the north coast region in particular, to accomplish fishery enhancement if enhancement is possible and that they will be derelict in their duty if they fail to consider and incorporate appropriate enhancement features into the Dos Rios Project.

We agree with the recommendation of the California Department of Fish and Game that necessary fish and wildlife studies be continued on an uninterrupted basis and that such studies be specifically authorized in the legislation authorizing the Dos Rios Project. We additionally concur with the department's recommendation that such legislation should specifically permit state funding of necessary fish and wildlife studies with project credit being given the state for funds expended.

### PROJECT IMPACT

The Dos Rios Project will have a tremendous impact upon the County of Mendocino and the various local governmental agencies which have the responsibility of providing necessary public services in the project impact area. Not only will increased levels of governmental services be necessary to meet the needs of the construction work force, but public agencies operating in the area will be faced with a substantial depletion of their tax base due to the removal of project lands from the tax rolls. For the sake of simplicity, these two problems are dealt with separately in this report.

The Corps of Engineers' feasibility report and their subsequent publication of supplementary data on the Dos Rios Project identify the numerous public service problems which will develop as a result of the influx of nearly 2,000 persons during the project construction period.

Table III, which was developed by the Corps of Engineers, indicates that there will be a gradual population buildup during the project construction period with the peak being reached during the fourth year of construction.

The Corps of Engineers estimates that the construction work force and their dependents will increase local governmental operating expenses, exclusive of schools, by \$723,864 over the project construction period. The estimated year-by-year expenditures are shown in Table IV, which was also developed by the Corps of Engineers.

It is easy to see that the impact of a large project such as Dos Rios upon a basically rural county with low assessed valuation can be serious in terms of the cost of increased governmental services. Under the Byrne Act,<sup>16</sup> the State of California provides financial assistance to local public agencies for police and fire protection, public health and hospitals, sanitation, and emergency and indigent relief where the construction of state water projects place an undue burden upon local agencies.

Payments are authorized for projects constructed by the state or by the state jointly with the federal government. Funds expended for these purposes are considered a part of the cost of the water project.

<sup>16</sup> Water Code Section 12950 et seq.





TABLE III  
Dos Rios Project Work Force and Dependents

Year	Dam and reservoir	Tunnel Mendocino portion	Relocated Covelo	Relocated airport	Relocated Indian community	Subtotal, total work force	Net in-migration	Dependent in-migrants	Total net in-migration
1-----	210	200	20	--	--	430	235	470	705
2-----	485	200	150	--	--	835	460	920	1,380
3-----	730	200	20	--	--	950	520	1,040	1,560
4-----	915	200	40	40	45	1,200	660	1,320	1,980
5-----	825	200	--	--	--	1,025	560	1,120	1,680
6-----	550	200	--	--	--	750	410	820	1,230
7-----	320	200	--	--	--	520	285	570	855

TABLE IV  
Estimated Local Government Operating Expenses  
Caused by Dos Rios Project

Construction force <sup>1</sup>	General government		Public safety	Public works	Health	Libraries	Parks and recreation	Total
	Department	Nondepartment						
	\$5.98	\$12.81						
705	\$4,216	\$9,031	\$17,392	\$16,828	\$21	\$2,898	\$3,962	\$54,348
1,380	8,252	17,678	34,045	32,941	41	5,672	7,756	106,385
1,560	9,329	19,984	38,485	37,237	47	6,412	8,767	120,261
1,980	11,840	25,364	48,847	47,263	59	8,138	11,128	152,639
1,680	10,046	21,521	41,446	40,102	50	6,905	9,442	129,512
1,230	7,355	15,756	30,344	29,360	37	5,055	6,913	94,820
855	5,113	10,953	21,093	20,409	26	3,514	4,805	65,913
								\$723,878

<sup>1</sup> Includes workers associated with dam and reservoir, constructing tunnel, construction of relocated Covelo, Covelo Airport, and Indian Community.



The Byrne Act, however, will not apply to the Dos Rios Project due to the fact that it will be constructed solely by the federal government but will apply to the state-constructed tunnel portion of the project. There presently are no federal statutes which provide assistance to local public agencies similar to that contained in the Byrne Act.

In addition to funding increased services resulting from State Water Project construction, the Byrne Act also provides funds for capital outlay expenditures for the above mentioned purposes. Capital outlay expenditures may be made directly by the state for temporary facilities to meet needs during the construction period or by loans for permanent facilities which must be repaid with interest by the local agency over a 30-year period.

It appears to the committee that payments must be made to local public agencies within the Dos Rios Project impact area for increases in their operating costs which are a direct result of project construction. Due to the fact that there is no basic federal law which directly deals with the problem of increased costs to local government, we feel that it is essential that the legislation authorizing the Dos Rios Project include an authorization for the Corps of Engineers to make such payments to affected local governmental agencies upon essentially the same basis as that contained in the State of California's Byrne Act.

The problem of funding the increased operating costs of local governmental agencies which result directly from the influx of construction workers on large public works projects has long been recognized. The State of California through the enactment of the Byrne Act has come directly to grips with this problem and has provided what we think is an equitable solution.

The federal government, on the other hand, has not as yet recognized the financial problems their projects can create for local public agencies.

We feel that this problem must be recognized and solved and that the federal government has a responsibility to provide meaningful financial assistance to local public agencies impacted by their projects.

The Dos Rios Project will have its most significant impact upon the Round Valley Unified School District. At the peak of project construction, the present district enrollment of 420 will be nearly doubled. The estimated influx of school children due to the Dos Rios Project is based upon experience obtained by the Department of Water Resources in the construction of the Oroville Dam and by the Corps of Engineers at The Dalles in Oregon. The Corps projections of increased enrollments are set forth in Table V.

The schools within Round Valley presently do not have excess space, thus, the influx of construction-related children will not only result in increased operating costs but will necessitate the construction of additional school facilities as well. It should be pointed out at this point that existing school facilities will be inundated by the reservoir and will be replaced by the federal government. This should be accomplished at the earliest possible date.

It should also be pointed out that the increased enrollments will not present any particular problem due to the fact that funds are made

TABLE V  
ESTIMATE OF SCHOOL CHILDREN  
CONNECTED WITH THE DOS RIOS PROJECT

Year	Net in-migration of workers	School children
1	235	235
2	460	460
3	520	260
4	660	330
5	560	280
6	410	205
7	285	143

available to school districts impacted by federal projects for both capital and operating expenditures.

It should be noted, however, that the Congress in the recently submitted federal budget has been requested to reduce funds for school districts in federally impacted areas. If such action is forthcoming, problems could develop in regard to the Dos Rios Project which would require remedial measures.

Public Law 815 of the 81st Congress provides capital outlay funds in the amount of \$2,000 per child if the construction worker resides on federal land and \$1,000 per worker if he is employed on federal land. Additionally, Public Law 874 of the 81st Congress provides for annual payments of \$300 per child to cover current operating expenses.

We basically agree with the Corps of Engineers' analysis of the problem of project impact where they state that "In view of state and federal legislation authorizing financial assistance and the flexibility within the project budget, providing local services for the construction force is less a matter of financing than of scheduling."<sup>17</sup>

While the influx of construction workers and their dependents will cause some short-term problems, it appears that they can be dealt with in an orderly manner through proper planning. The Dos Rios Project, however, will have a more far-reaching impact upon the area and will present some very real long-term problems for the public agencies which provide services in the project area. This occurs due to the fact that a substantial portion of the land required for the project is presently in private ownership and will be removed from local tax rolls when acquired for project purposes.

According to the County of Mendocino, the present assessed valuation of the area within the project take line is about \$3,000,000. This amounts to approximately 2.4 percent of the assessed valuation of the entire County of Mendocino. It should be noted, however, that this is only an estimate due to difficulties encountered by the county in interpreting the project take line. Based upon the tax rates in effect for the 1968-69 fiscal year, the loss of revenue to all public agencies taxing within the Round Valley area would amount to \$262,779 annually.

<sup>17</sup> Corps of Engineers Supplementary Data, Office Report No. 2, *op. cit.*, p. 14.

The itemization of this loss, by agency, is shown in Table VI.

TABLE VI  
Estimated Loss of Tax Revenue to Local Public Agencies  
Due to the Dos Rios Project  
Based Upon 1968-69 Tax Rates

Tax rate per \$100	Purpose	Amount
\$0.01	Mendocino County Flood Control and Water Conservation District...	\$3,000
0.12	Library.....	36,000
0.14	Water.....	3,802
0.32	Lighting.....	1,747
0.33	Fire protection.....	8,917
0.06	Public cemetery.....	3,213
3.11	Unified school district.....	93,300
3.31	County general.....	99,300
0.45	Junior college.....	13,500
<b>\$7.85</b>		<b>\$262,779</b>

This loss of assessed valuation will obviously have an adverse impact upon all agencies responsible for providing public services in the area of the project. The impact, however, will vary from agency to agency. It appears that the hardest hit will be those units of local government which supply services only within the Round Valley area through ad valorem taxation. As one example, the Round Valley Unified School District presently has an assessed valuation of \$6,382,890. The project will remove \$3,000,000, or about 50 percent, of this assessed valuation from the tax base of the district.

When the tax base of local agencies is reduced through the acquisition of land for public projects, the problems of supplying and financing local public services remain. Generally, the burden of funding such services is simply shifted to those lands remaining on the tax rolls which then must pay higher taxes for the same level of service.

Normally, public works projects do not have an impact upon local public agencies of the magnitude which will be experienced because of the Dos Rios Project. The problem is more severe in this instance due to the rural nature of Mendocino County with its relatively low assessed valuation and because the project will require the acquisition of the entire developed area of Round Valley.

We believe that the problem posed by the Dos Rios Project is somewhat unique and warrants special consideration in order to assure that an unfair burden is not placed upon the people of Mendocino County and the public agencies which must furnish necessary public services.

While some individuals assert that there is no tax loss to local governmental agencies due to the construction of large water resource development projects, the Corps of Engineers recognizes that this will not be the case regarding the Dos Rios Project and acknowledges the severity of the problem a substantial loss of tax base will cause in a county such as Mendocino. They also point out that "the inequity of the situation is even more apparent when the ultimate direct beneficiaries are areas with very large tax bases."

In order to assure that the people of Mendocino County receive equitable treatment and are not unduly burdened by the Dos Rios

Project, it is the recommendation of this committee that authority be provided the Corps of Engineers in the legislation authorizing the Dos Rios Project to make payments in lieu of taxes to those public agencies in Mendocino County which will suffer a loss of tax revenue due to removal of lands acquired for project purposes from local tax rolls. This is particularly important for the Round Valley Unified School District. Payments made in lieu of taxes should be considered a project cost and apportioned among the purposes of the project.

Payments in lieu of taxes should be made only upon the net loss in local tax base. That is, the annual tax rate applied to the value of property lost because of the project less the value of property added due to the project.

The construction of the Dos Rios Project will require the complete reorientation of the present agriculture-lumber based economy of the area to a recreation base. While this shift could possibly occur fairly rapidly, it is more likely that the buildup will be gradual and that the adverse effect of the project upon local tax base will extend over a period of years and well beyond the project construction period.

Due to the uncertainty regarding the rate at which the buildup will occur, it is further recommended that payments in lieu of taxes continue from the first year of net loss until the lost tax base, plus normal growth, is completely replaced due to new development.

It is our feeling that such payments should be made on a flexible schedule and based upon a formula which takes into consideration the fluid nature of the problem with which we are attempting to deal. The principal consideration is the equitable treatment of the people affected by the project. The development of a flexible payment schedule based upon the rate of growth would permit the early termination of payments if growth is rapid or the extension of payments if growth is slow.

We recognize that the Corps of Engineers might face practical problems in providing funds should the period of payments in lieu of taxes continue beyond the project construction period. Perhaps the most practical way of meeting this problem would be for the Corps of Engineers to make required payments from project funds during the period of project construction with the Department of Water Resources assuming responsibility for such payments as may be appropriate subsequent to the completion of the project.

It is further recommended that the Corps of Engineers and the Department of Water Resources immediately sit down with affected local agencies in order to work out an acceptable formula for determining the amount of annual payments in lieu of taxes.

In making the above recommendations, we recognize that the project will generate increased tax revenue due to the influx of construction workers and their families into the area. The Corps of Engineers estimates that approximately \$575,000 in additional revenue from sales, motor vehicle, and cigarette taxes will be generated during the seven-year project construction period.

We would point out, however, that revenue from these sources accrue only to counties and cities. While the loss of property tax base to Mendocino County will undoubtedly be offset to some degree by increased revenue from these sources, such increases will not serve to



replace the property tax revenue which is lost due to project construction. It must also be remembered that the local agencies which provide services in the immediate area of the project do not receive tax revenue from the sources mentioned above and thus would not be affected by the increased tax revenue generated due to project construction.

In short, it is our judgment that the federal and state governments have a responsibility to replace as a project cost whatever tax revenue is lost to affected local agencies because of the Dos Rios Project. We feel that equitable treatment of the local people affected by the Dos Rios Project is of paramount importance and that such treatment can only be assured by providing for payments in lieu of taxes to replace lost tax base.

### INDIAN MITIGATION

Opposition to the Dos Rios Project has been expressed by the Indian community of the Round Valley area due to the fact that the reservoir formed by the dam would inundate that portion of the Indian lands which are located within Round Valley. The local Indians have received support from numerous groups, including the American Indian Historical Society. The committee is certainly in sympathy with the position of the Indian community and recognizes their fear that they will again be deprived of their land without compensation.

In considering the objections of the Indian community, we must also consider the "mitigation" measures which have been proposed by the Corps of Engineers. The Corps has proposed the replacement of Indian lands acquired for the project on the basis of two acres for each acre acquired. The Indian community has voiced opposition to this proposal due to the fact that the land to be taken for project purposes is level and would be replaced by hill land. It should be noted that this proposal would serve to consolidate Indian land holdings in the area, thus making them more manageable.

More important, however, is the Corps of Engineers' proposal to provide an economic base for the Indian community. This would be accomplished by acquiring land and developing facilities to accommodate 1,000,000 visitor-days of recreation use on Indian lands. The magnitude of this "mitigation" cannot be ignored. The corps's proposal would involve the direct expenditure of some \$24,000,000 for lands and capital development of recreational facilities for the direct benefit of the Indian community.

Assuming the Corps's estimates of project recreation use are correct, the Corps's proposal for the development of a substitute recreation economy could well be a profitable venture for the Indian community. The proposal, however, must be considered as a starting point in working out an equitable program which is satisfactory to the Indian community and must receive more detailed study and analysis before a final solution is reached.

The Eel River Association has suggested that the Indian community should be treated no differently than any other landowner in the area and that perhaps the outright purchase of Indian lands might be the best solution in the event the Indian community does not desire to operate the proposed recreational development or that such an undertaking would not be profitable.



There are two important factors which, we believe, tend to support this suggestion. The Round Valley Indian Reservation was created by executive order in 1858, and additional lands were added to the reservation in 1873, 1875, and 1876. In total, the Indians received 50,752 acres of land, consisting of 42,164 acres of allotted lands and 8,588 acres of tribal land.

At the present time, however, the holdings of the Round Valley Indian community total 19,036 acres, consisting of 6,131 acres of allotted lands, 12,885 acres of tribal lands, and 20 acres which are currently being held by the United States government. It should be noted that the total present tribal lands exceed the amount originally granted due to the fact that allottees have relinquished their lands to the tribe.

It can be seen from this data that the Round Valley Indian community has for some time been in the process of disposing of their land holdings. In fact, several parcels have been recently advertised for sale but all offers were turned down due to the fact that the offers were not commensurate with the value of the land.

It appears to the committee that objections to the Dos Rios Project which are based ostensibly upon the desire of the Indian community to retain their lands, or upon the basis that the acquisition of 4,560 acres of Indian land for project purposes would fragment their land holdings, simply are not valid. One needs only to look at a map of the Indian land holdings in the area to see the existing fragmentation which is the direct result of previous land disposal by the Indian community.

It should be pointed out that the Indian community will retain all of their land holdings within the normal project take line and that the lands below maximum reservoir pool which are acquired for the project will be replaced with additional lands to tie the Indian lands together into economically manageable units.

Secondly, the development of a substitute recreationally based economy for the Indian community, as proposed by the Corps, would tend to isolate the community from other recreational development planned for the project and, most importantly, from the relocated town of Covelo.

In view of the efforts which have been made to assimilate the American Indian and other minority groups into the communities which have grown up around them, the Corps's proposal might be viewed by some as a step backwards.

We have presented these points here only to assure that they will be properly considered during the development of a program which is satisfactory to the Round Valley Indian community. We cannot recommend any specific approach or solution. This must be the subject of additional study and can only be resolved through negotiation with representatives of the Indian community. We see no argument raised by these people which is incapable of resolution by men of good will exerting an honest effort to attain a fair and just solution.

Our only interest is to assure that fair and equitable treatment is accorded the Indian community and that full value is paid for any lands acquired for project purposes.

## NORTH COAST DEVELOPMENT POLICY

The Corps of Engineers' proposal for the construction of the first major water development project on the north coast to meet the basic requirements of the State Water Project immediately raises several fundamental questions regarding the policies which will be applied to such development.

The Burns-Porter Act clearly indicates that funds accumulated under its bond-offset provisions are to be expended for the development of projects which will meet local needs, including flood control, as well as to provide water to augment supplies available in the Sacramento-San Joaquin Delta. In this regard, it is noted that the entire conservation yield of the Dos Rios Project is dedicated to augmenting Delta water supplies in order to firm up the yield of the State Water Project and to fishery releases.

During the formulation of the State Water Project and the development of the Burns-Porter Act, it was recognized that the State of California, in developing water for export, had an obligation to the areas of origin to not only see that the water requirements of such areas were met but, where possible, to develop projects which would enhance the economics of those areas through the development and enhancement of their recreation and fish and wildlife resources.

We believe this policy to be extremely sound and recommend that it be carried through to the development of water projects on streams in California's north coastal area. While the upper Feather River Facilities were specifically named and authorized in the Burns-Porter Act, that act also vests specific authority in the Director of Water Resources to authorize such projects in other areas.

Although the Director of Water Resources has statutory authority to authorize such projects without additional legislation, we believe that certain basic guidelines are necessary to govern the authorization and development of small local projects. Such projects should be subject to the same provisions as are other elements of the State Water Project but should be constructed only to fulfill the water requirements of a local area and/or to develop and enhance the area's recreation, fish, and wildlife resources.

Any project authorized and developed to meet local requirements should be constructed in accordance with the following general guidelines:

1. The project should be located in the same watershed as a major water export project which has been included in the State Water Resources Development System. For such purposes, "watershed" should include all streams and tributary basins which contribute to the flow of the major water course at the point it enters the ocean.
2. The cost-benefit ratio for the proposed project must at least equal unity. In other words, the benefits which will accrue through the addition of the ancillary project must equal or exceed the cost of the project.
3. The project must be integrated financially into the State Water Project with water from the project being supplied at the Delta Water Rate.

4. Ancillary projects should be planned and constructed in accordance with the provisions of the Davis-Dolwig Act. Recreational features must be operated and maintained by the Department of Parks and Recreation, an appropriate federal agency, or a local agency with managerial and financial resources sufficient to undertake such a responsibility. The fish and wildlife enhancement features are properly the responsibility of the Department of Fish and Game and they must agree to operate and maintain such features prior to the commencement of construction.

We believe the adoption of a policy for north coastal water development which will permit construction of small projects to meet local needs and to develop the fish and wildlife resources of the region will not only provide long-term economic benefits for the area but will also be of immeasurable benefit to the State of California as a whole.

#### LAND ACQUISITION—COVELO RELOCATION

As pointed out earlier, the Dos Rios Project will have a severe impact upon the Round Valley area. Difficulties will be encountered in providing necessary public services and the project will greatly deplete the local tax base. While these problems are important and must be dealt with in a logical and equitable manner, one of the most difficult problems which must be faced is the complete reorientation of the economic base of the area. There are, we believe, certain steps which can be taken which will assist in providing an orderly transition to a recreation-based economy.

According to the Eel River Association, one of the greatest fears of the people of the Round Valley area is that the acquisition of land for the project will extend over a long period of years and will result in the deflation of land values in the area. The association has therefore recommended that all lands and improvements required for the project be acquired immediately after project authorization.

In addition to alleviating the fears of property owners over the possibility of reduced land values, we believe the acquisition of all lands necessary for the project immediately after project authorization would assist in providing for the early and orderly relocation of the town of Covelo. This would generate a more rapid replacement of lost tax base and would serve to ease the disruption of the local economy by permitting the reestablishment of the business community to take the advantage of construction employment.

We concur with the association's recommendation for the early acquisition of project lands. We further recommend that the Department of Water Resources advance funds to the Corps of Engineers for the early acquisition of such lands in the event funds for this purpose are not forthcoming from the Congress with the amount of the advance, plus interest, being credited against the state's repayment commitment.

We also concur with the Corps of Engineers' recommendation that agricultural lands be leased back to those property owners who desire to continue their farming operations during the project construction period. This would not only keep the land in productive use until necessary for project purposes, but would serve to maintain employment in the area as well.



## ARCHAEOLOGY AND ANTHROPOLOGY

Numerous archaeologists and anthropologists have expressed concern that the Dos Rios Dam will inundate and destroy the only remains of the unexplored prehistoric culture of the ancient Indian inhabitants of the Round Valley area. There are some 800 known archaeological sites, and possibly an additional 100 unknown sites, which experts in the field believe must be excavated if the history and culture of the early Indian inhabitants is to be preserved.

Based upon estimates made by the National Park Service, the Corps of Engineers has included approximately \$500,000 in their project budget for archaeological work in the project area. However, the professional archaeologists and anthropologists which appeared before this committee believe this amount of money to be grossly insufficient to fund and complete an effective archaeological salvage program. Robert L. Edwards, chairman of the Society for California Archaeology, has submitted to the committee a hurriedly prepared tentative anthropological salvage program for the high Dos Rios Dam. This tentative program sets forth what the author believes to be the minimum level of program necessary to properly develop a rudimentary knowledge of the cultural and physical history of the early inhabitants of the area. He estimates the cost of this program to be in the neighborhood of \$5,000,000.

The committee, however, is not in a position to evaluate the adequacy or inadequacy of either the program proposed by the Corps of Engineers or the program developed by Mr. Edwards, but we do believe that the governments of the State of California and the United States in development of works to improve our modern culture and society have a real responsibility to those who have preceded us in assuring that their heritage is not lost to ourselves and to future generations.

We believe further that an archaeological salvage program is necessary in the area to be inundated by the Dos Rios Dam and that the costs of the salvage program are properly chargeable to the proposed project. The salvage program should begin at the earliest possible time and should continue uninterrupted through the project construction period.

While the committee cannot make recommendations relative to the magnitude of the salvage program, we feel it should be conducted at a level which is sufficient to develop a reasonably accurate physical and cultural history of the early Indian inhabitants of Round Valley.

Even though the target date for completion of the Dos Rios Dam and Reservoir appears to be some distance in the future, the lead time available to formulate and carry out an effective archaeological salvage program is, in reality, quite short. This critical factor mandates that the best, most efficient program possible be formulated, funded, and carried out if necessary work is to be completed prior to the completion of the project. It is, therefore, the recommendation of this committee that the Corps of Engineers consider the immediate appointment of a board of recognized experts in the fields of archaeology and anthropology to formulate the archaeological salvage program and to supervise the survey, excavation, and interpretation work.

It appears that the existing provisions of both state and federal law are more than sufficient to properly carry out the recommended program. Section 234 of the Water Code authorizes the Department of Water Resources to make studies and investigations necessary to preserve archaeological remains which would be destroyed by a state-constructed water project.

This section states that "The department, either independently or in cooperation with or through any person or any county, state, federal or other agency, is authorized to investigate, excavate, and preserve any historic or prehistoric ruin or monument, or any object of antiquity, situated in areas to be used for state water development purposes." While the matter is not entirely clear, it also appears that funds made available by the Burns-Porter Act for the construction of the State Water Resources Development System may be used for archaeological studies and investigations at projects constructed as a part of the system.

It should be noted that these provisions of state law are discretionary and do not mandate investigations and studies of the type recommended. Federal law, on the other hand, mandates the preservation of historical and archaeological data which would be destroyed by flooding caused by the construction of any water project developed by any agency of the United States Government.

We believe the statutory authority provided to be more than adequate. What is needed at this point is a meaningful recognition of the archaeological importance of Round Valley and appropriate steps to assure the preservation of the history and prehistory concealed within the valley.



SEPARATE COMMENTS

OF

SENATOR JOHN L. HARMER

"I wish to make it clear that my approval of this report is with the greatest of reluctance. I have done so only because it has been represented to me by both the State Department of Water Resources and the representatives of the Metropolitan Water District that some projects similar to the proposed Dos Rios Project capable of delivering 900,000 acre-feet of water to the California Water Project are absolutely necessary in order for the project to be able to operate at its fullest capacity. I am further relying upon their direct statement to me that in all of Northern California there is no more feasible, less expensive, more desirable location for a dam than where the contemplated Dos Rios Dam would be located.

"The testifying experts from both the Department and the MWD insist that even in the face of all of its evident disadvantages and undesirable qualities, the Dos Rios Project is the most efficient and effective way to meet the State's obligation for full delivery of water under the commitments following the Burns-Porter Act, and that in fact Dos Rios is the most efficient, most effective way for the State to meet that commitment.

"I wish to further go on record as being opposed to any further developments for the delivery of water to Southern California in the nature of the Dos Rios Project. We have come to a time now where technologically we are capable of both desalinizing and reclaiming used water to such an extent that the vast expenditure of monies and the wholesale destruction of irreplaceable natural resources such as will be caused by Dos Rios should never have to be duplicated again.

"I further wish to go on record as stating that, in my opinion, someone should be most severely criticized and chastened for allowing the state to be committed to the delivery of a certain volume of water with only the vaguest notion as to where the water would come from. We could have, and we should have, known in 1959 and 1960 when the Burns-Porter Act was adopted and the State made its commitment for the delivery of water where that water would come from and what would be necessary in terms of the dislocation of people and the destruction of natural resources in order to meet that commitment. It is not enough to say that we knew the water would come from somewhere. It is not enough to say that the data was not available. \$2½ billion dollar programs should not take place without all of the data necessary to make a decision about the program being gathered together.

"I have therefore reluctantly signed the committee report with the majority on the understanding that this separate statement would be entered into the report, making clear my views. In effect, as far as I am concerned, the committee was left without any choice. It would be the height of irresponsibility to refuse to make the necessary commitment to complete the State Water Project. At the same time, it seems to me to be the ultimate in contempt for the public good to have committed us to such a project without being able to identify the specific sources of the water and the extreme disadvantages entailed in obtaining that water as those which are evident in the Dos Rios Project.

"Respectfully submitted, Senator John L. Harmer."

## APPENDIX



Report to

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*Senate Committee on Water Resources*  
*California Legislature*

REVIEW OF  
INTERIM REPORT  
ON

WATER RESOURCES DEVELOPMENT  
FOR  
MIDDLE FORK EEL RIVER

January 1969

PREPARED BY

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January 13, 1969

W-69.00

The Honorable  
Gordon Cologne, Chairman  
Senate Committee on Water Resources  
State Capitol  
Sacramento, California 95814

Dear Senator Cologne:

We are pleased to submit our report on review of the April 1968 report by the San Francisco District Engineer of the U.S. Corps of Engineers, entitled, "Interim Report on Water Resources Development for Middle Fork Eel River."

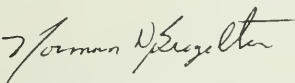
In response to your request, we have analyzed the Corps' report and testimony presented at the two joint hearings held by the Senate and Assembly Water Committees. We also conferred with the staffs of many interested agencies for substantiating data.


We conclude, among other things, that the Middle Fork Eel River Project is the logical next step to meet the additional water supplies of the State Water Project, and its Federal authorization should be sought at an early date. There will be a number of difficult environmental problems requiring additional study, and your Committee should consider the advisability of State funding to expedite their resolution.

Our conclusions and recommendations are attached with supporting discussion of what we consider to be the principal issues.

We sincerely appreciate the cooperation and assistance of your Consultant, Louis B. Allen, Jr.

Respectfully submitted,

  
Norman D. Brazelton  
Project Engineer

  
Joseph E. Patten  
Chief Water Resources Engineer



## ORGANIZATION

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CONSULTING ENGINEERS

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## ACKNOWLEDGMENT

During the review of material for this report, considerable supporting data and staff time were made available by various Federal and State agencies. The excellent cooperation and assistance provided by these agencies and their representatives are gratefully acknowledged.



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## CONCLUSIONS

Our review of the April 1968 Interim Report on Water Resources Development for Middle Fork Eel River and study of supporting data, as described in the attached report, lead us to conclude that:

1. Additional water supplies must be developed to meet the State water contract commitments, commencing in 1986, and a total firm additional supply of 900,000 acre-feet annually must be available for export from the Sacramento-San Joaquin Delta by 1990.
2. The proposed Middle Fork Eel River Project is the most logical and expeditious, single project source to meet the additional water supplies of the State Water Project, taking into consideration the necessary timing and alternate costs.
3. The Dos Rios Dam and Reservoir, operated coordinately with Central Valley Basin facilities, would produce a firm export yield of about 900,000 acre-feet annually at the Sacramento-San Joaquin Delta.
4. Flood control on the Eel River is needed, and Dos Rios Dam and Reservoir, operating in conjunction with the authorized Eel River Levee Project, could contain the 100-year flood. Flood control storage on the Eel River as a single-purpose project cannot be justified except as a function of a multipurpose project, such as proposed.
5. Early authorization of the project is necessary if the 1986 water delivery schedule is to be met.
6. The employment of the provisions of the Water Supply Act of 1958 for repayment of costs for the water supply function of the proposed Dos Rios Dam and Reservoir offers financial advantages to the State and water contractors. Execution of a contract is required before initiation of construction.
7. Most of the responsible agencies for planning, design, construction, and repayment strongly support the proposed project.

## CONCLUSIONS

8. The proposed Dos Rios Dam and Reservoir is a multipurpose project offering new recreation opportunities and financial advantages to the State by the inclusion of recreation as a function and possible enhancement of the fishery resources.
9. Construction of the dam and reservoir will disrupt existing environments and ecologies, with possible serious impact upon them. The Corps of Engineers' Interim Report on Water Resources Development for Middle Fork Eel River, dated April 1968, is a feasibility report in support of authorization of the proposed project. After authorization, about 10 years would be available for study and resolution of environmental problems.

## RECOMMENDATIONS

Based on our conclusions relating to the adequacy of the proposed Middle Fork Eel River Project to meet additional State water requirements, we recommend the following:

1. The State should support early Congressional authorization for the Dos Rios Dam and Reservoir portion of the proposed Middle Fork Eel River Project.
2. A letter of intent to participate in the proposed project under the provisions of the Water Supply Act of 1958 should be submitted to the Secretary of the Army by the State, and preliminary contract negotiations with the United States should be initiated.
3. A letter of intent to assume financial responsibilities under the Federal Water Project Recreation Act of 1965 should be submitted to the Secretary of the Army by the State to implement the inclusion of recreation as a function of the project.
4. Additional advanced planning studies are necessary, should move forward expeditiously in a manner not to interfere with project authorizations, and should include the following:
  - (1) Continued investigations for better definition of fish mitigation and possible enhancement, including offsite developments.
  - (2) Soil and plant ecology and interrelationships of habits and habitat for the affected game as it relates to mitigation.
  - (3) Impact studies relating to the Indian community, considering their socioeconomic interest in the future of the project and an analysis of the associated costs as applied to the cost allocation analyses.
  - (4) Impact studies relating to additional costs to local government, loss of tax revenue, general access to areas adjacent to the proposed reservoir, and need for early acquisition of rights-of-way.



## RECOMMENDATIONS

- (5) Definition of archaeological and anthropological values at an early date.
  - (6) Reevaluation of all functions affecting cost allocation analyses, maximizing the multiple-use concept.
  - (7) Maximize Dos Rios Reservoir capacity and water conservation yield at the Delta by the consideration of the raising of Dos Rios Dam, reduction in dead pool storage, and employment of dry-year clause in the fishery releases.
5. The Department of Water Resources should consider the advisability of establishing a specific task force for coordinating all activities leading to the construction of the proposed project; and for guidance to resolution of the environmental problems, it should retain the best available consultants in the fields of fish and wildlife biology and sociology.

## Section I INTRODUCTION

The construction of Dos Rios Dam and Reservoir on the Middle Fork Eel River has been proposed by the San Francisco District Engineer of the U.S. Army Corps of Engineers in his report dated April 1968. This report entitled, "Eel River Basin, California—Interim Report on Water Resources Development For Middle Fork Eel River," has been approved by the Board of Engineers for Rivers and Harbors, and on July 5, 1968, was submitted to the State of California for comments prior to submittal to the Congress of the United States for authorization.

Under State law, Federal project proposals are submitted to the respective Senate and Assembly Water Committees in the State Legislature for their review, who may, at their option, comment thereon. In October of 1968, the Senate Committee on Water Resources retained the firm of Clair A. Hill & Associates, Consulting Engineers, to advise them on various water matters. To assist them in preparation of their comments on the proposed Middle Fork Eel River Project, the first assignment to the consultants was the technical review of the project report. This report summarizes our review and comments on the proposed project.

All related reports of the U.S. Army Corps of Engineers† (CORPS) and the California Department of Water Resources† (DWR) have been available for review. Also, the supporting data have been discussed with the staffs of these and other organizations. The testimony presented at the joint public hearings held by the Senate and Assembly Water Committees in August and October also has been studied during the course of the review. Little attention has been devoted to the Eel River routing studies, as they are currently in progress and will have little or no effect upon the size or location of Dos Rios Dam and Reservoir.

Continuous investigations of the Eel River Basin have been carried on by the DWR since 1957. The results of these studies have been published in Bulletin No. 136, "North Coastal Area Investigation," and Bulletin No. 171, entitled "Upper Eel River Development." In addition, both the CORPS and the U.S. Bureau of Reclamation†† have made extensive investigations for water development in the area.

† As used in this report, "CORPS" refers to U.S. Army Corps of Engineers, San Francisco District, and "DWR" refers to California Department of Water Resources.

†† Hereinafter referred to as "Bureau."

## INTRODUCTION

Projects of the magnitude proposed are subjected to extensive investigations generally in three phases: reconnaissance, feasibility, and advance planning and design. The reconnaissance work for Bulletin No. 3 and Bulletin No. 136, as well as early studies of the Eel River by both the CORPS and the Bureau, lead to general overall plans for development. Studies during the past few years by the CORPS in cooperation with the DWR have lead to specific project formulation and demonstration of feasibility as outlined in the CORPS' report. After authorization, additional advance planning for final design of all details of the project will be conducted.

Early confidence in the upper Eel River as the next source for the State Water Project was expressed by the then Director of Water Resources, Mr. William E. Warne, in his "Upper Eel River Development Authorization" of March 9, 1964. To improve efficiency and avoid duplication of effort, primary responsibility for the investigations of the Middle Fork Eel River were assigned jointly to the CORPS and DWR as outlined in the State-Federal Interagency Agreement dated September 1966. This was followed by the memorandum of understanding between the CORPS (South Pacific Division) and the State of California DWR for development of the Middle Fork Eel River signed October 5, 1967 by Director Gianelli and the then Division Engineer, Brig. Gen. John A.B. Dillard. This agreement provides the general basis for authorization, financing, construction, and operation of a joint State-Federal Middle Fork Eel River Project which is the proposal of the subject report as discussed in the following sections.

## Section 2

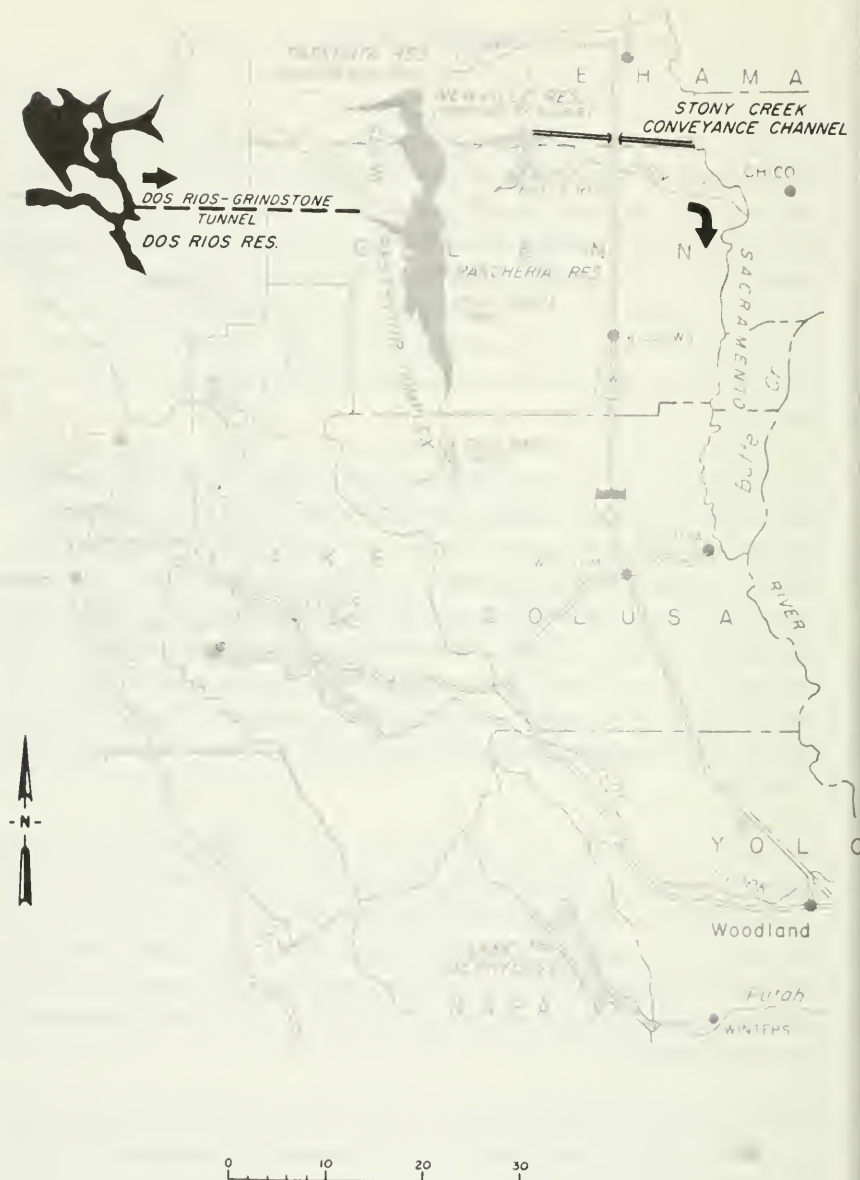
### PROPOSED PROJECT

The general plan of development for the Middle Fork Eel River, as outlined in the CORPS' report of April 1968 and illustrated on Figure No. 1, proposes major storage at the Dos Rios site and a 21-mile transbasin diversion tunnel to the Sacramento Valley watershed. The project is proposed as a joint State-Federal undertaking with the CORPS to build the dam and reservoir and the State of California to build the export conveyance facilities. Federal authorization for the dam and reservoir would be sought from Congress, and the State's participation in the water conservation function would be negotiated under the provisions of the Water Supply Act of 1958.

The proposed Dos Rios Dam would be built on the Middle Fork Eel River, about 3 miles upstream from its confluence with the main Eel River, and consist of a 730-foot-high earth and rockfill structure containing 30 million cubic yards of material. A multiple-level intake structure would provide for the selection of quality water (temperature and turbidity) best suited to the fisheries. Additional facilities connected to the outlet works would provide for nominal power generation (4,800 kw) and conveyance of water to the proposed fish hatchery downstream from the dam. The spillway would have a side channel crest upstream of the left abutment, and a 50-foot-diameter spillway tunnel extending to a stilling basin beyond the toe of the dam.

At the top level of the flood control pool, Dos Rios Reservoir would contain 7,600,000 acre-feet, or approximately the equivalent of the combined gross storage of Lakes Shasta and Oroville. The first 2,000,000 acre-feet would be reserved for dead storage, the next 5,000,000 acre-feet for water conservation, and the top 600,000 acre-feet reserved for flood control operation. The water surface area at maximum conservation storage is about 40,000 acres and at dead storage would be about 22,000 acres.

Proposed fish and wildlife mitigation features include a large anadromous fish hatchery to be located just below the dam. Downstream fishery releases would range from 200 to 350 cfs, estimated to total 217,000 acre-feet annually, and a 16,000-acre wildlife area adjacent to the reservoir is proposed as replacement of inundated deer habitat. Additional areas adjacent to the reservoir would be



MIDDLE FORK EEL RIVER PROJECT

FIGURE - I



## PROPOSED PROJECT

developed to exploit the recreation opportunities, to relocate the small town of Covelo with a population of about 1,200, and to reestablish an Indian community for approximately 350 residents.

Alternative transbasin conveyance routes are currently under additional study by the DWR, but as proposed in the CORPS' report, the export facilities would consist of a 21-mile tunnel direct from Dos Rios Reservoir to Grindstone Creek, a tributary of Stony Creek in the Sacramento Valley. Additional improvements would be required downstream for conveyance to the Sacramento River. All of the export conveyance facilities would be a State responsibility.

The proposed Dos Rios Reservoir would have four major functions: water supply, flood control, recreation, and power generation. The power development would make use of the downstream fishery releases and be quite nominal. The full potential for recreation development is estimated to be 7 million visitor-days; however, due to limited highway access, initial recreation facilities are based on 2 million visitor-days a year.

The reservoir would fully control flood flows from the Middle Fork Eel River, which represents over 20 percent of the total Eel River flood flows. Operated in conjunction with the presently authorized levee project near the mouth of the Eel River, Dos Rios Reservoir would provide in excess of 100-year protection and would have reduced the December 1964 flow (exceeds 100-year flood) of 840,000 cfs to 650,000 cfs, with 0.5-foot encroachment on the freeboard of the levees. Very substantial stage reductions would be accomplished along Eel River from the damsite to Fernbridge.

The average annual flow of about 1,000,000 acre-feet into Dos Rios Reservoir, regulated by the 5,000,000 acre-feet of conservation storage, would provide for the release of about 217,000 acre-feet annually for the downstream fisheries, and an average annual export of about 400,000 acre-feet. The remainder is either spilled downstream or lost to evaporation. Annual exports will vary from zero during very wet years to about 1,300,000 acre-feet in an extremely dry year, depending upon the availability of Central Valley excess flows available at the Delta. When combined in the proper time sequence, the Eel River exports and Delta surplus flows provide a net firm yield of about 900,000 acre-feet per year as measured at the Delta. This yield is based on comprehensive joint State Water Project and Central Valley Project operation studies, which are discussed in considerable detail under Section 4.

## PROPOSED PROJECT

The total first cost of the project as estimated by the CORPS is \$398 million of which the dam and reservoir are estimated to be \$245 million, and the tunnel cost is estimated to be \$153 million. The following is a summary of the allocated first costs to each function of the project, as well as to the Federal and non-Federal responsibilities.

### SUMMARY OF ALLOCATED FIRST COSTS

(millions of dollars)

Agency	Flood Control	Water Supply	Recreation	Power	Total
Federal	30.4	0	24.0	2.6	57.0
Non-Federal	0	339.0	2.0	0	341.0
<b>TOTAL</b>	<b>30.4</b>	<b>339.0</b>	<b>26.0</b>	<b>2.6</b>	<b>398.0</b>
% of Total	8	85	6	1	100

The dam and reservoir would be constructed by the CORPS following the usual Congressional authorization and subsequent appropriations. The allocation of \$30.4 million and \$24 million for the flood control and recreation functions, respectively, would be nonreimbursable. The power allocation would be repaid with interest by the sale of power and energy.

The entire water conservation function of the dam and reservoir costs would be contracted for by the State of California under the provisions of the Water Supply Act of 1958. The costs of the tunnel would be financed by the State through the offset provisions of the Burns-Porter Act, for which bonds in the amount of \$170 million have already been set aside. The State water contractors, under the terms of existing contracts, are required to repay the entire water conservation cost allocation which would be reflected in the Delta water rates. The future Delta water rate is currently estimated at about \$6 per acre-foot, and the estimated incremental effect of Eel River water cost is about \$4, resulting in an overall Delta water rate of \$10 per acre-foot.

### Section 3

## SUMMARY OF HEARING TESTIMONY

A number of public hearings have been held in the North Coastal area and Sacramento by various agencies, including the two joint hearings by the Senate Committee on Water Resources and the Assembly Water Committee. The present report relies upon testimony presented at the latter two hearings held in Ukiah on August 16, 1968 and in Sacramento on October 17, 1968. The hearing at Ukiah was devoted primarily to testimony of local interests, whereas the various State and Federal agencies provided most of the testimony in Sacramento.

With every major water development proposal, there is some degree of controversy. The proposal for Dos Rios Dam and Reservoir is no exception since it would affect the anadromous fishery of the Middle Fork Eel River, wildlife within the reservoir area, and cause the displacement of people, some of whom are a part of an Indian reservation. Understandably, feelings run very strong both for and against the proposal. The intent of this section is to generally describe the testimony presented at the two hearings, recognizing that these views could change somewhat as studies progress and new findings are made available. For convenient reference, a partial listing of hearing participants has been prepared showing our interpretation of each as to an endorsement, qualified endorsement, or opposition to the project. This is shown in Table No. 1.

The project is supported by most of the water-oriented agencies, whether they be planners or water purchasers. The DWR and CORPS provided substantiating testimony, indicating that they had given consideration to all aspects of the project including the mitigation features. Also, some of the sportsmen groups appear to have endorsed the project with qualifications. All of the above generally recognize the need for additional water supplies and flood control, but some are concerned with the manner by which it may be developed. It may be of interest to note that of the 31 water contractors to receive water through the State Water Project, the two major users (the Metropolitan Water District of Southern California and Kern County Water Agency), together, representing about 70 percent of the total project deliveries, have endorsed the project. The latter agency expressed some concern as to availability of water for agriculture.

Table 1  
**POSITION OF GROUPS  
 PARTICIPATING IN JOINT HEARINGS†**  
 August and October 1968

Endorsement	Qualified Endorsement	Opposition
U.S. Corps of Engrs.	Eel River Flood Control & Water Conservation Assn.	Mendocino Co.
U.S. Bureau of Reclamation	Superior Calif. Water Assn.	Covelo Indian Community Council, Round Valley Reservation
Dept. of Water Resources	Kern Co. Water Agency	Sierra Club
Metropolitan Water District of So. California	Humboldt Co.	Save the Eel River Assn. Mendocino Co. Grange
Calif. Water Resources Assn.	Lake Co.	Mendocino Co. Farm Bureau
Los Angeles Chamber of Commerce	Shasta Co.	Mendocino Co. Historical Society
Covelo Action Committee	Salmon Unlimited	Mendocino Coast Taxpayers' Assn.
	Assoc. Sportsmen of Calif.	Taxpayers' Assn.
	Calif. Wildlife Federation	No. Coast Fly Fishermen Club of Humboldt Co.
	Western Lumber Mfg., Inc.	Trout Unlimited
	F.M. Crawford Lumber, Inc.	Golden Gate Angling & Casting Club
	Citizens for Sound Planning in Water Development	Calif. Fly Fishermen Unlimited
	Dept. of Fish & Game	American Indian Historical Society
	Dept. of Parks & Recreation	Archaeologist W. Henn
	Dept. of Conservation	Anthropologist R. Heglar
		Anthropologist R. E. Schenk
		Cal.-Nev. United Methodist Church
		United Auto Work

† Classification by our interpretation

## SUMMARY OF HEARING TESTIMONY

Most of the concerns expressed in qualified endorsements are outlined in the testimony of the Eel River Flood Control and Water Conservation Association. This is an association representing the North Coast counties, dedicated to an orderly water development program on the Eel River and other coastal streams, *but in the best interest of the local area*. The association's concerns include essentially all the local impact effects of the project, particularly as they relate to costs of local government and preservation of the local economy. Also, the English Ridge Project and the southerly routing of Dos Rios water is suggested with consideration of water quality control in Clear Lake as a function of the project.

In general, the opposition to the project has been expressed by the preservation groups and the local agencies in the immediate area who are understandably reluctant to see any major changes in the fish, wildlife, and other environmental ecology.

A substantial portion of the testimony against the proposed project is related to the environmental effects resulting from construction of the Dos Rios Dam on Middle Fork Eel River and the flooding of the 40,000-acre reservoir area. Additional questions have been raised regarding the needs for water, the economics of the proposal, and the adequacy of engineering and geologic considerations. The following is a general listing of the objections and concerns taken from the testimony presented at the Legislative Committee hearings:

1. Need for additional water doubtful.
2. Benefits, costs, and general economics of project questionable.
3. Flood control accomplishment insignificant.
4. Alternate sources not considered.
5. Geology and investigations thereof inadequate.
6. Fish and wildlife mitigation deficient.
7. Local impact considerations inadequate.
8. Disposition of Indian community unreasonable.
9. Sacramento River seepage damages will result.
10. Archaeology-anthropology values not determined.

The people of the State of California throughout its history, with or without the aid of the Federal Government, have developed and will continue to develop water to meet its growing demands. All of these developments tend to upset various phases of



## SUMMARY OF HEARING TESTIMONY

the local environments, some good and some bad. It is not the intent of this report to praise or condemn either the water seekers or the preservationists, and this section is included primarily to show the diversity of views and interests needed to be considered in their proper perspective if water development is to progress in the broadest possible interest.

## Section 4

### REVIEW ANALYSIS

The principal objective of this report is to provide a reasonably comprehensive technical analysis of the Middle Fork Eel River Project as proposed by the CORPS, and its overall efficacy in meeting the State water contract commitments at a reasonable cost. This section provides a discussion on the major technical accomplishments, some of which are extremely complex, particularly when they relate to alternatives.

The scope of our analysis does not allow detailed review of the designs and estimates of the proposed physical works. The CORPS is a responsible agency with experience in the design and construction of large projects and is supported in the geologic adequacy of the site by competent consultants. Investigations to date have been conducted to the degree usually incorporated in feasibility reports, and it is always necessary after authorization and prior to construction to conduct additional advance planning and detailed geologic exploration, testing, and final detailed design. This general procedure is followed by all agencies in planning, design, and construction of public works.

Water rights for operation of the proposed project will have to be perfected by the State, but no difficult problems are anticipated in this regard.

### WATER NEEDS

There are a number of factors relating to the development of water needs and water supply for the State Water Project. The focal point for all is the Delta, truly the hub of all water development in the State.

All Central Valley Basin runoff reaching the major Sacramento and San Joaquin River tributaries under natural conditions would reach the Sacramento-San Joaquin Delta. Under present and projected conditions of water development, the Delta is still the central point in the basin at which an overall accounting of water is maintained. Upstream storage and uses or basin exports are depletions, whereas releases from storage or basin imports are accretions.

## REVIEW ANALYSIS

Both the Central Valley Project and the State Water Project extract water from the Delta for reregulation and use to the south, including deliveries south of the Tehachapi Mountains. Both projects rely upon upstream storage for seasonal and cyclic storage of water to "firm up" the unregulated tributary flows occurring in the Delta, and the general principles of operations for export apply to each.

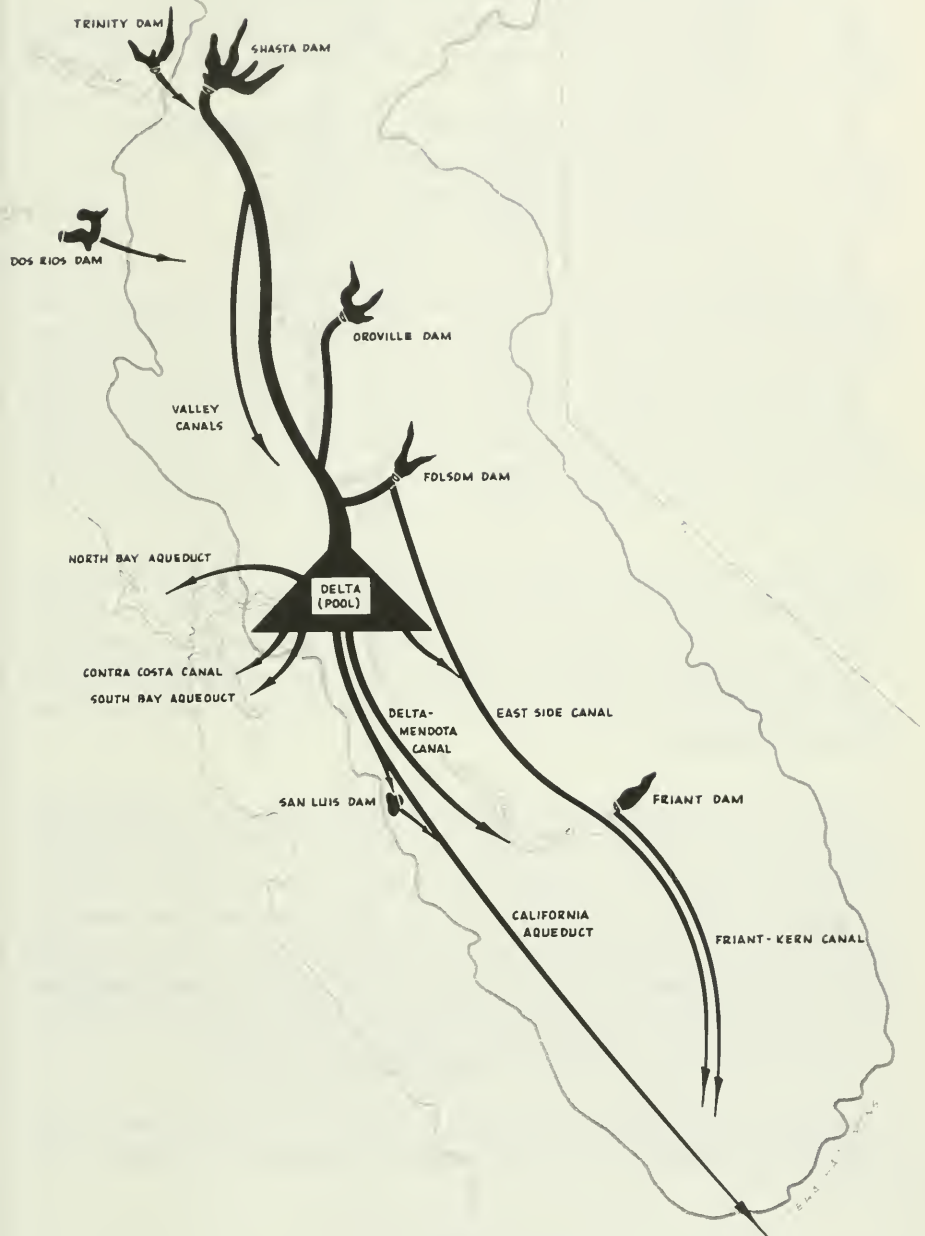
For this reason, it is necessary that the two projects operate conjunctively, and a general approval to the development of operating criteria was recognized by the two operating agencies in the May 16, 1960 agreement which provided for a sharing of water deficiencies at the Delta and established the framework within which the two agencies have been negotiating for the past 8 years for specific operating agreements.

The State in its project formulation and water supply contract negotiations added a pricing concept to the above-described Delta operational principles, resulting in the so-called "Delta rate." This rate is to reflect the cost of water as measured at the Delta, but regulated at San Luis Reservoir, and includes costs of maintaining the water supply by replenishment (additional storage) for depletions caused by other upstream users. Combined, these generally describe the DELTA POOL CONCEPT which is graphically illustrated on Figure No. 2.

In 1960, when the bond issue authorizing financing of the State's water facilities was passed, the DWR estimated that water contract requirements were 4,000,000 acre-feet, and that the initial State water facilities (Oroville Reservoir, State's share of Delta pool surplus, and State's share of San Luis Reservoir) could supply a firm yield of 4,100,000 acre-feet, which allowed 100,000 acre-feet for operation losses. These quantities have subsequently been modified to reflect current data, including all factors affecting the State water requirements, as well as availability of water at the Delta to meet them.

During the past 8 years, a number of events resulting from intensive negotiations and investigations have brought the matter of Delta water supply and demand into better focus. The complexity of each of these is beyond the scope of this report, but for a general understanding of interrelationships, the principal events are listed as follows:

1. General settlement of CVP and State water facilities water rights.
2. Execution of 31 water service contracts with the State of California in the amount of 4,230,000 acre-feet.



DELTA POOL CONCEPT

## REVIEW ANALYSIS

3. Development and general acceptance of Peripheral Canal as the physical works to provide Delta water control.
4. Reduced entitlements to Colorado River water by Court decree.
5. Approaching agreement between DWR and USBR for conjunctive operation of Federal and State water facilities and the sharing of responsibilities for:
  - (1) Effects of and replenishment for upstream depletions.
  - (2) Schedule for future additions to CVP.
  - (3) Project operational losses.
  - (4) Delta water quality control requirements.

The interagency project operation negotiations have produced a computerized water accounting system to aid in the joint operations study of the CVP and State Water Project for which a number of projected water development and water utilization assumptions and estimates have been made. These include future Central Valley Project additions, both for water supply and distribution, and for the development of upstream water projects for local use. A time sequence for these events is employed, and the firm yield of the State's conservation facilities established.

The latest DWR estimate of yield for the initial conservation facilities of the State Water Project (taken from Director Gianelli's testimony of October 17, 1968) is shown on Figure No. 3, along with the growing contract entitlements as provided in the State water supply contracts. The intersection of these two lines indicates that in 1986, additional State water conservation facilities are needed to maintain the water contract entitlements.

Based on the conjunctive CVP-State water facilities operation studies and the above-described assumptions regarding effects of other future project development, the yield required from additional conservation facilities is estimated to be about 900,000 acre-feet by 1990. These studies and assumptions have been reviewed in detail, and in our judgment represent as realistic an approach as can be taken using data that are available at this time. In other words, the State Water Project must have additional conservation facilities by 1986, and the State must be in the position to meet the full contract commitments by 1990.

The additional 900,000 acre-feet required to sustain the State Water Project yield is not to be confused with new water requirements beyond the capability of the



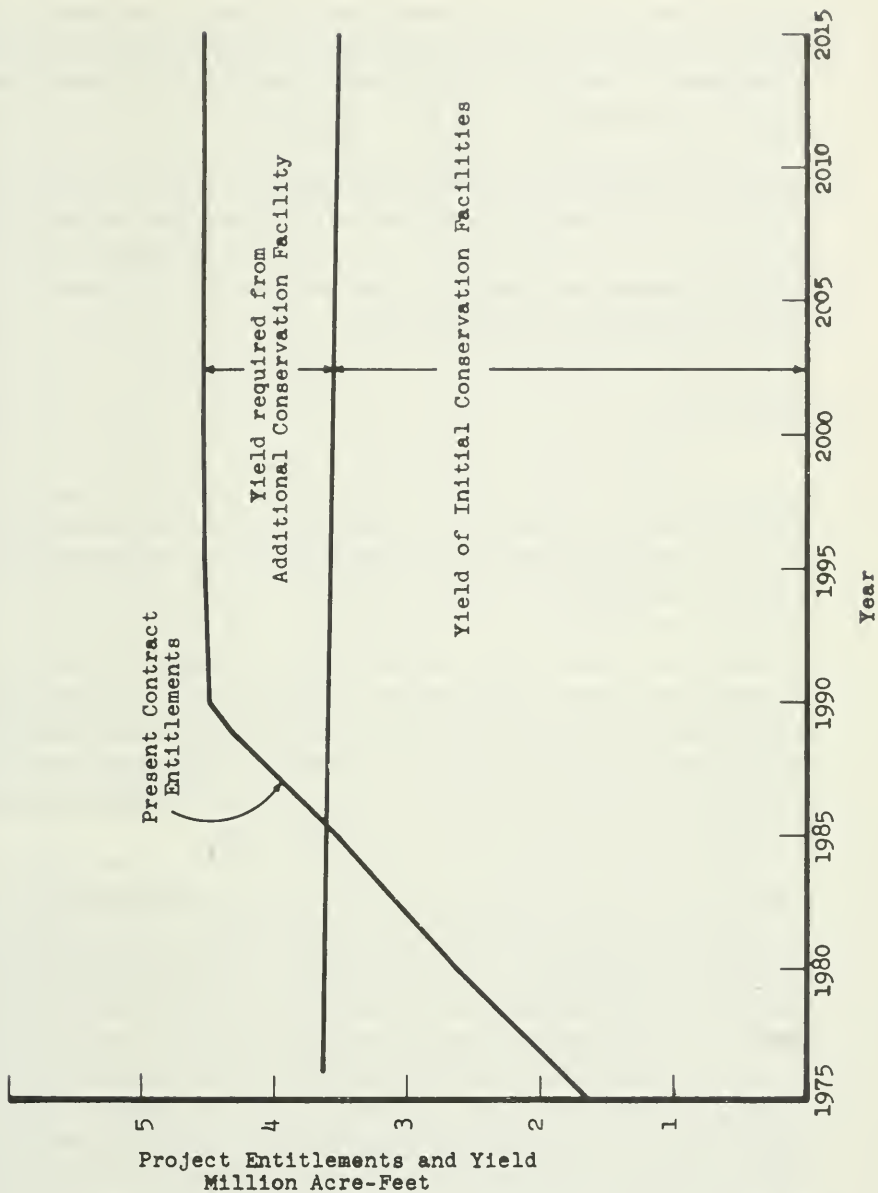


FIGURE - 3

California aqueduct. Such new requirements will necessitate the construction of an entirely new project, such as a parallel aqueduct, and have been generally referred to as "supplemental" water. The "supplemental" water would be in excess of the additional 900,000 acre-feet.

The concept of additional water conservation facilities to sustain the project is not new. Written into the Burns-Porter Act and the State water supply contracts is the financing provision by offset bonds for the construction of such additional facilities. The need has always been recognized, and the costs, therefore, will be repaid by the water users as reflected in the Delta water rate.

### PROJECT YIELD

Having described the DELTA POOL CONCEPT and the proposed conjunctive operation of the CVP and State Water Project, we can now develop the meaning of the proposed 900,000 acre-feet of new yield credited to the Dos Rios Project as proposed by the CORPS.

Our references for review of specific details relating to the adequacy of the yield are the DWR staff and files dealing with the conjunctive CVP-State Water Project operation studies described above. It will be the State's responsibility under the Water Supply Act of 1958 to furnish the CORPS with operating criteria for the transbasin release of Dos Rios water. The State's studies have fully integrated the proposed Eel River diversions with the Central Valley supplies.

The State's current basic principle for the proposed operation of Dos Rios Reservoir for the water conservation function is to fill water deficiencies as they occur in the Delta, taking full advantage of all surplus flows at that point, and, therefore, maximizing yield of the project. On this basis, exports from Eel River would be made only during dry cycles, dry years, and, in some cases, limited to dry months. For example, the estimated diversion requirement for the dry year of 1924 is about 1,200,000 acre-feet, whereas there are several wet years during which no diversion would be made. During the dry cycle of 1928-34, the average annual diversion is estimated to be about 900,000 acre-feet. For years such as the period following the dry cycle (1934-50), the average annual export would be on the order of 250,000 acre-feet.

## REVIEW ANALYSIS

The so-called Delta surpluses occur for the most part during years other than the dry cycle. In order to make this water usable on a dependable basis, Dos Rios Reservoir would be available to "fill the gaps," and this is the reason for the heavy exports made during the dry cycle. In other words, long-time carryover storage is provided at Dos Rios for exports to the Delta only when Delta flows are low to make the flows of wetter years usable. Dos Rios Reservoir, as proposed in the CORPS' report, when operated as described, would produce a new water yield at the Delta of about 900,000 acre-feet annually.

Detailed conjunctive studies showing projected Delta operations, although not yet published, are completed and have been reviewed in depth. These indicate that the estimated yield of 900,000 acre-feet per year at the Delta is realistic. It is understood that the DWR and the Bureau will soon formalize specific operating agreements, including the sharing of responsibilities for water distribution.

In general, water yield studies and basic hydrology of the Central Valley Basin are premised on abilities to meet demands during the dry cycle, 1928-34. The export capability during this period is a reasonable measure of firm availability at all other times. Other assumptions include agricultural water deficiencies in any one year of up to a 50-percent maximum, and an accumulated total of 100-percent deficiency taken during the dry cycle. By taking a deficiency in the dry year, a much higher sustained yield can be assured during the other years and is done on the basis that some irrigated agriculture can forego a crop (unplanted in anticipation of the dry year) more economically than pay the cost of assuring water for the dry year.

The fishery release, as proposed by the CORPS, is to maintain a downstream flow of 200 cfs during the months of June through September, and 350 cfs during October through May, which would require a seasonal total of 217,000 acre-feet. There are no deficiencies shown in this release, although it is common practice to employ the so-called "dry-year clause." For example, if an accumulated 100 percent of one year's release were allowed as a deficiency during the dry period 1928-34, about 30,000 acre-feet per year new yield could be realized from Dos Rios Reservoir.

Although the CORPS proposed Dos Rios Reservoir with a gross storage of 7,600,000 acre-feet, this capacity is not the physical limit of the site. Since mitigation features of the project are not necessarily aggravated by raising of the reservoir, consideration

## REVIEW ANALYSIS

should be given to the raising of the dam. An increase in the conservation storage by 1,500,000 acre-feet, when operated as described above, would yield an additional 200,000 acre-feet at the Delta, or an increase of 22 percent of the proposed yield.

Another possible opportunity to increase the project yield would be to reduce the dead pool. During future planning for the project, consideration should be given to this. This would involve further studies relating to the location of the upstream portal of the export tunnel, as well as the possible effects of relatively shallow reservoir depths over the Round Valley portion of the Dos Rios Reservoir.

In order to give the reader a broad view of the distribution of the average annual runoff of Middle Fork Eel River, the following summary, based on the latest State-Bureau long-time average Delta operations, is presented:

### PROPOSED DISPOSITION OF MIDDLE FORK EEL RIVER RUNOFF

	Long-time Average	Maximum	Minimum
Annual Inflow	1,000,000	2,250,000	170,000
Annual Fisheries Release	217,000	217,000	217,000
Annual Export	400,000	1,300,000	0
Spill	303,000	—	—
Evaporation	80,000	—	—

The CORPS' report indicates that the maximized annual yield of Dos Rios Reservoir as measured at the reservoir is about 660,000 acre-feet and that the project yield, using the Delta Pool operation, results in an annual yield of about 900,000 acre-feet. As indicated previously, we concur in the Delta yield analyses.

### ALTERNATE PROJECTS

A number of alternative sources have been suggested to meet the additional water supply needs described in the previous section. These include reclamation of waste water, desalinization of sea water, and Central Valley tributary development.

We have reviewed these alternatives and find that they are not available (already committed), not adequate to meet the total commitments, or not competitive with the cost of water from the proposed project. As discussed under the heading of **WATER NEEDS**, additional water will be needed to sustain these commitments by about 1986, and a full, firm, additional supply of about 900,000 acre-feet will be required by 1990.

Each of these alternate sources has been under investigation for many years, including numerous studies by the DWR. This question of alternatives is relative to the State's interest in maintaining the availability of water for its water contract commitments and not to meet new export project requirements.

#### Desalinization

Plans for the largest and most promising salt water conversion plant proposed at Bolsa Island, located along the Southern California Coast, have been shelved primarily because of uncertainties in the ever-increasing cost projections. During the past year or so of advance planning for this project, the cost estimates have nearly doubled because of new design contingencies previously unforeseen. No such plant has yet been built, nor would its ultimate capacity of 150 mgd, or about 150,000 acre-feet a year, be adequate to meet the additional water need. The capacity of nuclear desalting plants now in operation is on the order of 3,000 acre-feet per year.

The latest estimates for producing potable water at the Bolsa Island Plant, based on projected mid-1970 levels of technology, indicate water can be produced for about \$120 per acre-foot. This includes an outright Federal subsidy and a partial cost allocation to power production.

The CORPS prepared a comparison of Dos Rios water costs delivered to Southern California as compared to water delivered from Bolsa Island Plant to the same point.



## REVIEW ANALYSIS

This study indicated a minimum 2.5:1 higher cost for sea water conversion. The DWR made a similar comparison of costs at the Delta. This study showed a 4.5:1 higher cost for sea water conversion. These two comparisons show the cost of sea water conversion is not competitive with Eel River imports, estimated to cost about \$26 per acre-foot at the Delta.

### Waste Water Reclamation

There are a number of small waste water reclamation plants operating in Southern California, and the practical application of these plants is gradually increasing. Several persons testified that this source of water should be considered an alternate to the Middle Fork Eel River water. There are a number of reasons why we do not believe this source can be treated as a true alternate to Eel River.

Current estimates of waste water reclamation vary from about \$10 up to about \$65 per acre-foot, depending upon the particular circumstances relating to the individual plant. In some cases, there are extremely limited uses to which this water can be put, such as groundwater recharge to impede salt water intrusion from the ocean, and special recreation or other agricultural irrigation applications. The psychological barrier to the direct reuse of reclaimed waste water is a long way from being overcome and would require treatment of the waste water to drinking water standards costing in excess of the above-cited figures.

The apparent most efficient reuse of reclaimed water results from primary and secondary treatment of domestic sewage which is then spread in percolation ponds for groundwater recharge. This is currently practiced to some degree in Southern California, and the projected application of this practice, as indicated in recent studies of the DWR, shows that with the California Water Project and its full Southern California delivery, the combined sources of water including waste water reclamation should be adequate to meet the requirements (of Southern California) to about the year 2000. In other words, "supplemental" water, or water over and above the capability of the State Water Project, may not be needed until the year 2000.

If all the anticipated reclaimed water is used in determining the supplemental requirement, it is not available for the additional water required to sustain the

## REVIEW ANALYSIS

State's commitments to its water contractors. The State Water Project is assumed to be in full operation, and the need for an additional 900,000 acre-feet of water is a part of that assumption.

### Central Valley Storage

There are a number of proposals for additional storage projects within the Central Valley which, if all added together, represent a very substantial new water yield. Most of these are already committed either by authorization or advanced planning as additions to the CVP with their own service areas and, therefore, full utilization of the new water supplies.

Of the many projects mentioned, those we consider as possibly available would include the Cottonwood Creek projects proposed by the Sacramento District office of the Corps of Engineers, the Paskenta-Newville Project proposed by the Bureau, and the Rancheria portion of the Glenn Complex (Paskenta-Newville and Rancheria) under consideration by the DWR.

The status of the Rancheria Project investigations, and its extremely long fillup-period requirement, indicate the earliest possible availability of water to be from 25 to 35 years. The Paskenta-Newville Project currently under investigation by the Bureau could produce a yield of 300,000 acre-feet annually, but would require at least 25 years to deliver a firm supply. From the standpoint of both time and status of investigations in support of authorization, each is in a low competitive position.

The two Cottonwood Creek projects, Dutch Gulch and Farquhar School Reservoirs, proposed by the Sacramento office of the Corps of Engineers and currently under feasibility level investigations, are uncommitted and could produce a firm export yield of about 230,000 acre-feet annually. Even though no State conveyance facility would be required for these projects, any savings in capital outlay for such facilities is only delayed because the North Coast would have to be tapped in a few years anyway. The principal drawback of these projects, however, is that they can account for only about 25 percent of the total firm yield needed by the year 1990. The question then arises regarding project priorities and timing.

## REVIEW ANALYSIS

The only single project proposal available to satisfy the full needs of the State Water Project in 1990 is the proposed Eel River development. If one project offering a partial answer is authorized, the larger project authorization must be delayed.

### WATER SUPPLY ACT OF 1958

As a part of the River and Harbor Act of 1958 (Public Law 85-500), Congress included Title III — Water Supply (commonly known as the Water Supply Act of 1958). There are a number of features of this Act quite attractive to the State for financing of water development projects.

It is proposed in the CORPS' report that joint State-Federal financing be used for the storage and importation of Middle Fork Eel River water. As previously cited, DWR Director Gianelli, and the Division Engineer, Brig. Gen. John A.B. Dillard, of the South Pacific Division of the Corps of Engineers, San Francisco, signed a memorandum of understanding setting forth their intent to proceed with financing and construction of the project under the Water Supply Act of 1958.

The principal features of the Act, as they would apply to the proposed project, can be briefly summarized as follows:

1. The United States would design, finance, and construct the proposed Dos Rios Dam and Reservoir and essentially all its pertinent works.
2. The United States would finance as a nonreimbursable item the costs of the dam and reservoir allocated to such functions as flood control (\$30.4 million), recreation (\$22 million), and fish and wildlife enhancement. (The CORPS' report indicates that the State or some local non-Federal agency would have to repay the \$2 million for one-half the separable costs of recreation and if fishery enhancements are included, one-half the separable cost also would have to be repaid.)
3. Initial payments with interest would start when the first water is put to use, and they may extend over a 50-year period.
4. Payments on up to 30 percent of the total project costs can be delayed for not to exceed 10 years without interest (an allocation to anticipated future water demands).
5. After repayment, the State would own the storage rights subject only to payment of OM&R costs.

## REVIEW ANALYSIS

The usual procedure would be employed for authorization and appropriations to finance the project. The CORPS' report would be submitted to the appropriate committees of Congress, where hearings are held to allow debate on the merits of the project. The committees would then recommend to the Congress of the United States appropriate legislation for authorization. Similar procedures are usually followed for appropriations to fund the project, with final approval for both by the President. A contract between the United States and the State for repayment with interest of the costs allocated to water conservation would have to be executed prior to the initiation of construction of the project.

Some questions have been raised regarding possible Federal control of the water, which we believe is addressed to the so-called "excess lands" provision of reclamation law, and the question regarding whether or not under the Water Supply Act of 1958 the water can be used for agricultural purposes. This is fundamentally a legal determination; however, it appears that the commingling provisions of some of the Bureau's 9e contracts and the joint agreement between the State and Bureau for financing, construction, and operation of the San Luis Dam and Reservoir would be applicable. Water from all sources, including State and Bureau storage projects, is commingled at the Delta and in San Luis Reservoir. There is no way to distinguish who owns the water except by a water accounting system. The State's supply of water at the Delta, independent of the proposed Eel River imports, is more than adequate to satisfy the agricultural requirements, and there are no restrictions on the use of this water. Therefore, it can be shown that State water from its own initial water facilities would serve the agricultural demands, and the Eel River water would be delivered to the municipal and industrial users.

The proposed Dos Rios Dam and Reservoir would be financed under this Act; however, the remainder of the project, that is, the export conveyance system (Grindstone Tunnel) would have to be financed by the State of California. The State proposes that this part of the project be financed with the offset bonds that have accumulated under the provisions of the Burns-Porter Act. There now is about \$170 million set aside for the purpose of providing additional water. In addition, as proposed in the CORPS' report, some non-Federal agency would be required to assume the obligation for one-half the separable cost of the recreation allocation, which amounts to \$2 million, but even this would be financed by the United States and included in a repayment contract for repayment over the 50-year period with interest.

It has been indicated by Director Gianelli that the incremental Delta cost of the proposed additional water supply would be on the order of \$26 per acre-foot, and on this we concur. Additionally, if integrated into the total supply at the Delta, the incremental costs would be on the order of \$4 per acre-foot, which when added to current estimates of the projected Delta water rate, would result in a total of about \$10 per acre-foot.

### COST ALLOCATION

The State and, therefore, the water contractors have a particular interest in the allocation of costs for the proposed Dos Rios Dam and Reservoir to each of the participating functions. Since the State is proposing a joint venture on the project, the costs of dam and reservoir allocated to the water conservation function would be repaid by the State under the provisions of the Water Supply Act of 1958. The allocation procedure used in the CORPS' report is the standard separable cost-remaining benefits method, using 3-1/4 percent interest in a 100-year economic life, which is the standard procedure for Federal agencies. The four participating functions are: water conservation, flood control, recreation, and power.

Although we have not seen a directive on the new interest rate to be used in economic analyses of Federal projects, the President has recently approved the use of 4-5/8 percent instead of 3-1/4 percent. The effect of the change cannot be fully evaluated until the new policy has been clarified. It does mean that the economics of the project will have to be reevaluated by the CORPS before final submittal to the Congress. Since the benefit-cost ratio of the project is a favorable 1.9:1, it does not appear that the new rate will seriously affect the overall economics.

In the cost allocation analysis, any change in the benefits by the inclusion of additional purposes, particularly those where the allocated cost is nonreimbursable, may have the effect of reducing the costs allocated to conservation. For this reason, we recommend that the DWR continue planning and review of the project functions prior to execution of a repayment contract under the Water Supply Act of 1958. A few subjects for further consideration in this regard are suggested in the following paragraphs.



## REVIEW ANALYSIS

Before discussing specific subjects for further consideration, a brief description of the principles of cost allocation analyses is appropriate. In such studies, the maximum allocation to any one purpose is limited by the lesser of two amounts, either the value of the benefits attributed to the function, or the cost of the alternate single-purpose project required to produce it. For example, in the CORPS' report, the recreation benefits as computed are much less than the construction cost of a recreation reservoir, which means the benefits control. Therefore, any increase in benefits would result in the larger allocation to the recreation function. On the other hand, the allocation to water conservation is limited by the construction cost, which is less than the benefits and would be reduced only by the introduction of new purposes or a greater allocation of costs to other functions.

In the cost allocation analysis in the CORPS' report, only one-half of the recreation benefits is credited to the project; the other half is treated as a mitigation item associated with the relocation of the Indian community and, therefore, does not appear in the cost allocation analysis. One-half of the initial recreation facilities planned at the reservoir would be placed in the new Indian community, but this fact should not preclude the benefits attributed to this area from accruing to the project. These benefits should, therefore, be included in the overall cost allocation analysis. The effect of the CORPS' procedure is to leave a remaining \$18 million joint-use first cost which, when added to the cost of the new Indian community of \$24 million, results in a total of \$42 million of the project costs to be spread among all the functions. It appears to be a matter of policy that needs some clarification and will, no doubt, be a subject of negotiation prior to the adoption of final cost allocations.

A total of \$24 million is allocated to the recreation function as nonreimbursable. This, of course, would be substantially increased if the full benefits were applied as discussed above. Also, it is contingent upon implementation of the Federal Water Project Recreation Act of 1965 (PL 89-72), which would require a letter of intent on the part of a non-Federal agency to assume one-half of the separable recreation costs, which the CORPS has indicated to be \$2 million, and to agree to operate and maintain the recreational lands and facilities. If there are no facilities to accommodate the visitors, no benefits would accrue to the project, and, therefore, no allocation of project costs to the nonreimbursable recreation functions.

The State should furnish the letter of intent to participate in the recreation function, as a \$2 million investment in facilities results in a nonreimbursable allocation to the recreation function of \$24 million. In addition, the \$2 million could be made a part of the repayment contract under the Water Supply Act of 1958 and repaid over the 50-year period with interest. The difference in allocations of cost to the water conservation function for the project with and without recreation is \$16 million. If the State agrees to repay the \$2 million separable cost and assumes the estimated OM&R cost of \$107,000 per year, the net reduction in repayment obligations would be \$14 million. This is an attractive financial advantage which the State should not ignore in its overall analysis of the project.

Another important element affecting the overall cost allocation analysis is the question of fishery enhancement. Based on our discussions with the agencies involved, it appears that within the capabilities of the various proposed commitments to fish mitigation, there could be enhancement. This certainly should be studied further, and if greater benefits can be created by the project, they should be included. The inclusion of this function, as is true for recreation, is not without State obligations. The State would be required to repay one-half of the separable costs and assume the annual OM&R costs. The net overall repayment obligations could be reduced, however, and a natural resource improved.

### FLOOD CONTROL

Although the flood control function of the proposed Dos Rios Project is large, its relative significance is dwarfed by the magnitude of the overall project. As a function of the project, it is economically justified, but could not be economically justified as a single-purpose project. The advantages of joint-use facilities of a multiple-purpose project result in lesser costs allocated to the function than the cost of a single-purpose alternate project to provide that function.

A total of 600,000 acre-feet will be provided in Dos Rios Reservoir as primary flood reservation. This storage capacity would completely control the Middle Fork Eel River flows, representing over 20 percent of the total Eel River flood flows near its mouth. The 100-year flood of 750,000 cfs at Fortuna would have been reduced to 580,000 cfs. The December 1964 flow at Fernbridge of 840,000 cfs would have been reduced to 650,000 cfs had Dos Rios been in operation. With the presently

## REVIEW ANALYSIS

authorized Eel River Delta levees in operation, the December 1964 flow would have been contained with about one-half-foot encroachment on the levee freeboard.

The plan for flood operation of Dos Rios Reservoir is to store all inflow except minimum fish releases at any time the flow of Eel River at Scotia is forecast to exceed 150,000 cfs within the next 12-hour period. Water so stored would be released later at a rate which would not cause the flows at Scotia to exceed 150,000 cfs.



## Section 5

### SPECIAL PROBLEMS AND CONSIDERATIONS

As indicated in an earlier section, the construction of Dos Rios Dam and Reservoir will not be accomplished without serious controversy nor without facing up to a number of special problems. The magnitude of the project is a challenge in itself, aside from the various environmental effects which are deserving of further consideration. The subjects discussed under this heading are brought here not because they are necessarily different from those encountered in other projects, although some are, but in this particular case, they deserve some special attention.

#### SCHEDULE

The overall time schedule proposed by the CORPS for Dos Rios Dam and Reservoir is a little optimistic if water deliveries are to start in 1986. Allowing 9 years to fill the reservoir, 7 years for construction, and 3 years for design indicates a need for authorization 19 years prior to the need for a full reservoir. The primary need, however, will be the capability for making water exports in 1986, which could be provided within a 3- to 5-year fillup period. In either event, if this project is to meet the additional water supplies for the State Water Project, immediate authorization should be sought.

#### ROUTING STUDIES

Although the project as proposed by the CORPS includes the Grindstone Tunnel as an easterly gravity export diversion route to the Sacramento Valley, the DWR currently has under review the alternative routing proposal to Clear Lake and Cache Creek. Current plans are to complete these studies by June of 1970, which would allow ample time for construction and design of the diversion tunnel. Based on a 3-year construction period for the Grindstone Tunnel and 2 years for its design, it appears that route selection must be made by about 1974. The CORPS' construction schedule indicates that reservoir storage should commence in 1980, but it is not necessary that the tunnel be finished at this time. The first few miles of the upstream portion of the tunnel and all of the intake works should be completed by about 1980, while the remainder of the tunnel can be under construction during the early part of reservoir filling.



## SPECIAL PROBLEMS AND CONSIDERATIONS

The selection of any alternative routing should be supported by evidence of a compatible time schedule to meet the additional water demands in the Delta.

### STATUS OF FEDERAL AUTHORIZATIONS AND FUNDING

It is generally conceded that there now exists an alarming backlog of Federal projects awaiting authorization, and a number of those currently authorized are substantially behind in needed appropriations for their completion. Even though about 75 percent of the Dos Rios Dam and Reservoir costs would be repaid by the State under the provisions of the Water Supply Act of 1958, Congress would be required to authorize the project and appropriate all of the funds for construction. During the peak of construction, it would appear that annual appropriations on the order of \$30 to \$50 million would be required.

Again, it behooves the State to move expeditiously to encourage Federal authorization and funding for construction of the project if it is to be relied upon for its additional water supplies.

### HIGHWAY ACCESS

The proposed project has a potential recreation use of 7 million visitor-days per year, but due to limited access, the plan includes only initial facilities to accommodate 2 million visitor-days annually. Even this estimated visitation is based on a much higher standard of road to be completed by 1985 for Highway 261 from Highway 101 to Interstate 5. A highway of a standard to permit the estimated 2 million visitor-days per year would be at least a very good two-way highway, which is far better than present access. The cost of improving the present road to such a standard is not included in the project costs.

The report in its present form assumes the State will take over Highway 261 and make the necessary improvements. Since there may be some uncertainties relating to this, further consideration should be given to it, and while doing so, an evaluation of a much higher standard road should be given to possibly take advantage of some of the greater potential for recreation use at the reservoir. As indicated under the heading of **COST ALLOCATIONS** in Section 4, more recreation benefits applied to the project would result in greater nonreimbursable costs and, therefore, less costs for water conservation.

## SPECIAL ENVIRONMENTAL STUDIES •

is readily apparent from the testimony presented to the joint Water Committee hearings that there is grave concern regarding many environmental aspects of the proposed Dos Rios Dam and Reservoir. Some of the concerns are real; others appear to be emotional reaction. Construction of the project will cause a portion of the State's fish and wildlife and their habitat to be changed or destroyed, and a number of people will be displaced. These problems have been faced before, maybe not always adequately, but most have been resolved and in some cases for betterment. We cannot sit idly by and hope for the status quo, or hope that the problems will go away, but rather we need to meet the challenge of our growing State and its need for water by a sincere effort to find solutions to the problems that some say cannot be solved.

There have been previous overtures relating to comprehensive evaluation of the total environmental effects of proposed water projects on our fish and wildlife resources. Concerns for these environmental effects were expressed in Senate Resolution 257, passed at the 1963 regular session of the State Legislature. The need for additional studies is amply expressed in two WHEREAS clauses of that Resolution as follows:

*WHEREAS, the rapid population increase and economic development are causing and will cause in the future extensive changes in the land and water environment of the State thereby affecting the fish and wildlife resources which are influenced by physical changes in the environment; and*

*WHEREAS, further advance planning for fish and wildlife relating to these environmental changes caused by water and land development is necessary to provide for greater protection of and provide opportunities for enhancement of fish and wildlife and to be to the benefit of those developing lands and waters.*

At about the time of this Resolution, numerous water-oriented agencies including the then State Water Rights Board, the California Water Commission, several individual districts, and associations assisted in the development of the objectives expressed above. The need for additional work has not diminished; in fact, water resources planning activities are still well ahead of the planning activities relating to alternative approaches to the general mitigation problems.

## SPECIAL PROBLEMS AND CONSIDERATIONS

During the course of our review of the material available relating to this project including the testimony at the hearings, we have heard numerous comments relating to the devastating effects of construction, and how and why it would be impossible to resolve the problems created. On the other hand, the critics have little to offer regarding resolution of them. The problems are real, but there is time available during which reasonable solutions should be found.

At times, it is difficult to determine which agency is responsible for financing or planning for a particular function, and it is easy to "pass-the-buck" from one agency to another. The dam and reservoir portion of the project is proposed as a Federal undertaking involving many agencies with diverse interests. Similarly, the State also has numerous agencies with diverse interests in the effects of the project. There is a need for coordination of activities, and the DWR might best provide this service, but there appears to be a lack of funds to carry out necessary additional studies. It may be appropriate for the State Legislature to consider the advisability of advancing the funds for such studies if not forthcoming from the Federal agencies.

Some of the specific problems that need further study are discussed in the following paragraphs.

### **Fisheries**

Although there have been some expressions of serious concern over the possible effectiveness of the proposed mitigation features for the anadromous fishery on the Middle Fork Eel River, the Department of Fish and Game, and others seem to have hopes for full mitigation and possible enhancement. We feel that considerable attention should be given to this subject, and if at all possible as the Department of Fish and Game recommends, enhancement of the fishery should be considered.

The mitigation features for the anadromous fishery include a large fish hatchery located downstream from the dam and downstream releases ranging from 200 cfs to 350 cfs, which would require about 217,000 acre-feet of regulated water annually. Downstream water conditions will be drastically changed as a result of the proposed impoundment. As experienced elsewhere, temperatures will decrease, and this should be a plus factor. With multiple-level outlets incorporated into the dam, water of various temperatures and clarity can be drawn from the reservoir to best suit the needs of fish.

## SPECIAL PROBLEMS AND CONSIDERATIONS

the downstream releases, as proposed in the CORPS' report, are on a steady-flow basis. For a given reach of the stream, this may not be the most efficient use of the water for the fish. Studies should be made to determine to what extent it would be beneficial to vary the flow in accordance with the life cycle of the fish and to conform with downstream accretions of tributary flows, so that the net effect could be a higher sustained flow at some control point several miles downstream from the dam. Studies also should consider the application of channel manipulation for artificial spawning or for tributary storage for spawning habitat improvement.

### Wildlife

One of the most difficult mitigation problems with the construction of the Dos Rios Dam and Reservoir will result from the inundation of 40,000 acres, a substantial portion of which is the habitat for existing wildlife. The current state-of-the-art does not provide all the answers to the complex deer displacement problem and suggests the manipulation of an area equivalent to half the flooded area adjacent to the reservoir as a mitigation measure. Even this may not do the job. The Department of Fish and Game suggests *In all probability, some offsite mitigation will be needed.*

The State Department of Fish and Game also recommends continuing studies through 1974 to determine possible measures for the protection and enhancement of the affected fish and wildlife resources. Since the acreage involved in the deer mitigation is substantial (and the degree of success may be questionable), certainly additional studies are justified. We are not here considering the preservation of a species, but rather the preservation of a deer herd with a maximum number of on the order of 2,500. Every conceivable approach should be explored, to not only the mitigation procedure, but also the least costly method of accomplishing it, taking into consideration all economic factors, including those associated with the sports and recreation industries.

### Indian Community

The complications and social implications of the purchase of the Indian lands within the reservoir, and the reestablishment of a new Indian community adjacent to the

## SPECIAL PROBLEMS AND CONSIDERATIONS

reservoir, are not to be solved by money alone. The total impact upon these people should be fairly analyzed and reasonable plans laid out for equitable mitigation.

During the preparation of their report, the CORPS indicated they had met with the local Indian council, as well as the Bureau of Indian Affairs, on various occasions for assistance in developing appropriate mitigation. The CORPS, in recognition of the problems associated with inundation of portions of the reservation, proposed a solution involving a substantial sum of money. We do not have a better solution, but we suggest that further studies directed toward a clearer definition of the future of the Indian community and its stake in the project are indeed warranted.

### Archaeology-Anthropology

As a part of additional studies, we suggest further definition of the archaeological and anthropological values lying within the proposed reservoir area. According to the CORPS' schedule for construction of the Dos Rios Dam, flooding of the reservoir area would not commence until 1980 at the earliest. An early evaluation of the scientific contribution of the findings in the area should be made so that an exploration program could be identified and carried out.

### Impact On Local Area

Both the CORPS and DWR have made preliminary impact studies relating to the local agencies in the project area. These have indicated that during the early stages of the project they will suffer a decrease in tax revenue and be faced with increased costs for services. The studies also indicate that within about 10 years after project operation, tax revenues should surpass pre-project conditions. One of the major industries of the whole North Coast area is the recreation industry, and since the reservoir would create an opportunity for a substantial increase in this industry, it should be exploited to its fullest in the interests of the local economy.

Regarding the imposition of impact costs, there is both existing law and precedent for the construction agencies to assume certain responsibilities. We have not searched these, but suggest they be reviewed as to adequacy, and if found inadequate after appropriate evaluation, the proper legislative authorizations should



## SPECIAL PROBLEMS AND CONSIDERATIONS

sought in both the State Legislature and Congress. Some consideration also should be given to the possibility of local small projects, primarily for fishery and recreation enhancement of the local area. Precedence in this regard is well established in both the CVP authorizations and in the Burns-Porter Act. Plans for these possibly should be initiated at the local level regarding site and function feasibility.

The inundation of 40,000 acres by the proposed reservoir surely would cause some difficulties relating to general access to the surrounding areas. The proximity to vast public domain with timber and great recreation opportunities suggests detailed impact studies looking to long-range plans. With the influx of more people, the fire hazard will increase and may require special access.

Based on experience at other major reservoirs, these aspects of access on some occasions have been "too little and too late" and have caused difficult and embarrassing public relations. More planning and communication with the affected interests at an early date would accomplish a better job and avoid some of the difficulties.

### SACRAMENTO RIVER SEEPAGE

Since the completion of Shasta Dam, there has been a growing concern regarding the effects of its operation on groundwater seepage along the Sacramento River. The river literally has become a conveyance channel for stored water, and by storage regulation, the river stages are now quite different from their natural levels.

Sacramento Valley interests have expressed fear that the importation of Middle Fork River would cause seepage problems along the river. Our review of the planned operations indicates some difficulty in determining precise effect; however, there have been studies by both the Bureau and DWR, and the latter is continuing studies on this. Present indications are that there would be no detrimental effects.

We generally concur in the above conclusion because of the proposed schedule of exports from Dos Rios Reservoir. As described under the heading of PROJECT DELTA earlier, the imports would vary inversely with the natural flow in the Sacramento River. The lower the river and tributary flows are (and therefore Delta

## SPECIAL PROBLEMS AND CONSIDERATIONS

inflows), the greater the demand for the additional water. The extreme example would be the driest water years of record, 1924 and 1931, when the imports would be in excess of 1,000,000 acre-feet for each of these years. Moreover, these are years in which the agricultural users would be subject to about 50-percent deficiencies, thus reducing the heavy releases from Lakes' Shasta and Oroville that otherwise would be required.

Since the imports are scheduled to coincide with the low flow conditions, it does not appear that river stages would be raised to damaging levels.

### INTERAGENCY COORDINATION

The planning and construction of large water projects usually involve a number of public and private agencies, many of whom have various responsibilities and jurisdictions. The proposed Middle Fork Eel River Project will involve one of the most complex interagency relationships of any project constructed in California. There already has been a tremendous amount of interagency exchange of data and discussions through the California State-Federal Interagency Group, but there appears to be a need for better communication with the myriad of agencies having some jurisdiction over effects of the proposed project.

The mitigation problems alone deal with a large number of agencies; the project will require numerous complex negotiated agreements, such as the repayment contract with the United States under the Water Supply Act of 1958, and operating agreements with the Bureau for export from the Delta. Add to this the law created by the Burns-Porter Act, and the complicated contract commitments to State water users, and one can appreciate the challenge to proper coordination of all of the activities necessary to see this project to its completion.

The State-Federal Interagency Group should be commended for its effort thus far in accomplishing a realistic interagency approach to the planning investigations of the North Coastal area and parts of the Central Valley Basin. This has already avoided much duplication of effort and advanced the planning of various elements by assignment of responsibilities. If the proposed Middle Fork Eel River development moves ahead, it would appear desirable to create a specific task force of various Federal, State, and local agencies to assist in carrying out the program. The DWR should play the lead roll in establishing and carrying out the functions of such an organization.

CALIFORNIA LEGISLATURE

**JOINT COMMITTEE on OPEN SPACE LAND  
PRELIMINARY REPORT**

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HON. ROBERT J. LAGOMARSINO, *Vice Chairman*

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March 1969



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## INTRODUCTION

In the November election of 1966 the people approved Proposition Three and thereby added Article XXVIII to the State Constitution. In the following legislative session the Legislature passed Assembly Concurrent Resolution 26 which authorized the appointment of the Joint Committee on Open Space Lands.

Assembly Concurrent Resolution 26 directed the Committee to "analyze all facts relating to the grant of authority conferred upon the Legislature by Article XXVIII . . . including . . . the operation, effect, administration, enforcement, and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution." It also authorized the Committee to establish a citizens' advisory committee to assist the Joint Committee.

During 1967 the Committee recommended a procedure which later became Assembly Bill 2011. This legislation provided for temporary implementation of Article XXVIII. It granted use-related assessment to land which is subject to a restriction pursuant to certain scenic easements or the California Land Conservation Act of 1965.

A year later, in 1968, the Legislature enacted Assembly Concurrent Resolution 60, which required the Committee to submit a preliminary report early in the 1969 session and a final report early in the 1970 session.

For the past year the Committee and its Citizens' Technical Advisory Committee has explored the use of this existing legislation. To streamline the present law and to promulgate additional measures, the Committee chose to divide its attention between short-range and long-range objectives. This preliminary report represents the proposals which have been developed by the Citizens' Technical Advisory Committee and the Joint Committee staff. They are designed to meet the most urgent short-range needs. The long-range proposals will be contained in the Committee's final report which will be submitted to the 1970 session of the Legislature.



## CHAPTER ONE

### RECOMMENDATIONS

#### *California Land Conservation Act of 1965 (Williamson Act)*

1. The Committee recommends that the California Land Conservation Act be amended to:

- (a) Make all agricultural land eligible for contracts.
- (b) Eliminate the provisions authorizing agreements.
- (c) Except for recommendations included elsewhere in this report, retain the present provisions relating to contracts.

2. The Committee recommends:

- (a) That the establishment of agricultural preserves be required to be consistent with the general plan of the county or city.
- (b) That on and after January 1, 1971, only counties and cities having a general plan be permitted to establish agricultural preserves and execute contracts.
- (c) That any application to establish an agricultural preserve be referred to the Planning Department of the City or County, and that the Planning Department be required to submit within thirty days a report on the proposal. The report shall include a statement that the preserve is either consistent or inconsistent with the general plan and the Board or Council shall make a finding to that effect.

3. The Committee recommends that an agricultural preserve be required to contain at least one hundred acres.

4. The Committee recommends that the Act be amended to require that, within two years of execution of a contract on land within an agricultural preserve, the use of all other land within the preserve but not under contract must be restricted by zoning or other suitable means to agricultural use or uses compatible with agriculture. The Committee also recommends that the Act be amended to provide that failure to so restrict such land shall not be cause for cancellation or invalidation of any contract.

5. The Committee recommends that all provisions relating to the establishment or administration of agricultural preserves be placed in a separate Article.

6. The Committee recommends that the provision requiring the State to pay counties or cities \$1.00 per acre for land under contract be repealed. Notwithstanding this recommendation, the question of state participation in sharing the cost of this and other Article XXVIII programs remains under investigation.

7. The Committee recommends that the provision requiring payments by the county or city to the landowner be repealed.

8. The Committee recommends that the Director of Agriculture be relieved of certain burdens which are presently assigned to him under the Act.

9. The Committee recommends that the Act be amended to

- (a) Make it clear that the initial term of contracts may be longer than ten years.
- (b) Allow a contract having an initial term of twenty years or more to provide that the automatic extension of the contract shall not begin until the end of the tenth year of the contract.

10. The Committee recommends that counties or cities having land under contract be required to report annually to the State Board of Equalization and the Director of Agriculture the following information for each school district affected:

- (a) Number of acres of land under contract during the preceding fiscal year.
- (b) Number of acres of land under contract for first time during current fiscal year.
- (c) Total number of acres of land under contract during current fiscal year.
- (d) Difference between Assessed Valuation of land in each district and its Assessed Valuation as it would have been had there been no land under contract.

11. The Committee recommends that provisions of the Act which allow cancellation of a contract to be vetoed by protests of 51 percent of the owners of land within the preserve be repealed, and that provisions be enacted allowing protests of each owner to be presented at the hearing or in writing prior to the hearing.

#### *Extending the Land Conservation Act*

1. The Committee recommends that land within state designated wildlife habitat areas and Scenic Highway Corridors be made eligible for Land Conservation Act contracts.

The Committee proposes also that similar treatment should be accorded land encompassed by the National California Coastal Scenic Redwood Road and Trails System, should that program be adopted by the Legislature.

#### *Assessment of Open Space Land*

1. The Committee recommends that Section 423 of the Revenue and Taxation Code be amended to:

- (a) Establish capitalization of income as the method of valuing land subject to any enforceable restriction authorized by the Legislature pursuant to Article XXVIII.
- (b) Provide guidelines to be followed in determining the income to be capitalized with a minimum annual income of \$2.50 per acre.
- (c) Provide guidelines for determining the capitalization rate to be used.

#### *Assessment of Open Space Land During the Termination Period*

The Committee recommends that legislation be enacted which will provide a specific method to be used by the State Board of Equalization and county assessors in valuing open space land during the period



preceding termination of the enforceable restriction. Such legislation should require that consideration be given to the present worth of the fair market value of the land as it will be at such time as it is free of restrictions, and to the effect of the restriction upon the income producing capability of the land.

### ***Open Space Easement Act***

1. The Committee recommends the enactment of legislation authorizing cities and counties to accept grants of open space easements on land found by the legislative body to warrant preservation in the public interest. The Committee further recommends that such legislation contain provisions which will justify a determination by the Legislature that it is an enforceable restriction within the meaning of Article XXVIII of the State Constitution.

### ***Zoning and Article XXVIII***

1. The Committee recommends that the Legislature should not consider any form of traditional zoning sufficiently viable to warrant use-related assessment under Article XXVIII.

It is the view of this Committee that land use regulation through an exercise of the police power must be tied to long range planning and be governed by uniform standards and procedures in order to justify Article XXVIII assessment. By injecting these factors along with some form of State overview into the open space program, the shortcomings of zoning may be avoided.

Accordingly, the Committee will continue to investigate potential uses of the police power which could warrant a legislative grant of use-related assessment.

### ***Effect Upon School Districts***

The Committee recommends:

1. That legislation be enacted to empower counties to provide financial assistance to any elementary, high school or unified school district which is unable to maintain the level of its educational program due to an overall decrease in assessed valuation which is attributable to the restriction of land within the district pursuant to the California Land Conservation Act.

## CHAPTER TWO

### ANALYSIS OF RECOMMENDATIONS

#### 1. CALIFORNIA LAND CONSERVATION ACT OF 1965 (WILLIAMSON ACT)

##### *A. History and Analysis*

In 1965, when the Land Conservation Act was passed, all property in California was required to be assessed on the basis of its full cash value. One effect of that universal assessment standard was to impute speculative values to land, particularly in the vicinity of urban development. Since most of this land was agricultural land, the effect of steadily mounting assessments was not far to seek. As property taxes approached and at times exceeded net profits, agricultural landowners were compelled to discontinue farming. The resulting pattern was frequently one of premature land use conversion, discontinuous development and urban sprawl.

One purpose of the Land Conservation Act was to eliminate these pressures by removing certain land from the speculative land market. This was done by offering landowners an alternative to compulsory land speculation. The Legislature authorized counties to enter into contractual arrangements with owners of qualified land. The goal of the Legislature was simple: to so restrict the use of the land that potential purchasers would not be willing to pay prices reflecting nonagricultural uses and values. The effect would be twofold: (1) It would cause land to be assessed on the basis of its agricultural values, and (2) it would keep land in agricultural use.

The Land Conservation Act allowed farmers to contractually restrict the use of their land to agriculture for ten years. These contracts provide for automatic one year extensions at the annual anniversary date of the contract. By this device such rolling contracts are potentially in perpetuity but are in no case shorter than ten years.

Either the landowner or the county may begin a ten year termination period by filing a "notice of nonrenewal" in any year. Once such a notice has been filed, the contract is treated as an expiring restriction with a fixed termination date and is assessed accordingly. This method of termination does not involve any penalty or payback of deferred taxes.

As a means of dealing with strictly emergency situations where the public interest no longer dictates that the contract be continued, a separate procedure, called "cancellation", is permitted. When approved, such a cancellation is effective immediately.

The grounds for cancellation are prescribed in the Act. Mutual assent is not sufficient ground for cancellation. The opportunity for a more profitable use is not grounds for cancellation. Sale of the land in whole or in part has no effect upon the restriction and is not grounds for cancellation. If these and other requirements of the Act are met, the contract may be cancelled if cancellation would be consistent with the purposes of the Act and would be in the public interest.

Once cancellation is approved, the landowner must pay a cancellation fee amounting to fifty percent of the new unrestricted assessed value.

The success of the contractual restriction in reducing the assessed valuation of land was dependent upon its effect upon the market value of the restricted land. This was necessarily the case since at the time of its passage all property was required to be assessed on the basis of its fair market value.

In 1966 the people ratified Article XXVIII, thus granting the Legislature the authority to depart from market value assessment on open space land. A year later Article XXVIII was temporarily implemented by Assembly Bill 2011.

The 1967 Legislature used its Article XXVIII authority to give a new dimension to the Land Conservation Act. Williamson Act contracts were used as the yardstick for measuring land use restrictions which warranted a new standard of valuation. The Legislature decided that land which is restricted to agriculture or compatible uses pursuant to the Williamson Act should be assessed on the basis of its income generating value in agriculture. It found also that this assessment standard should prevail whether the restriction is reflected in lower sales prices or not. Accordingly, it denied to the assessor the use of any sales data in the valuation process.

During the first two years of the Land Conservation Act only 200,000 acres of land in *six* counties were placed under agreement. But with the passage of A.B. 2011 and an increasing effect of the uniform ratio provisions of A.B. 80 (1966 1st Extraordinary Session) the Williamson Act began to be used at a rapidly increasing rate to remove rural land from the speculative land market by contractually restricting its use.

Presently twenty-three counties have used the program to restrict more than two million acres of privately owned agricultural land. The Committee has not detected any substantive weakness or fallacy in the theory or practice of the Land Conservation Act approach to open space conservation. While it is subject to the inherent shortcomings of any voluntary program, it has received wide acceptance by both local government and agricultural landowners.

Nevertheless, in the course of the Committee's work several problems with the Act have been revealed. These problems will be discussed in order.

#### *1. Disuse of the prime land contract provisions of the Act*

The Land Conservation Act is made up of two programs. The first is denoted the "contract" program. Only prime land may be placed under contract. Any contract executed on prime land must have the approval of the Director of the State Department of Agriculture. The second program is known as the "agreement" program. Any land, including prime land, may be placed under agreement and the Director of Agriculture is not a party. Both landowners and local governments have favored the agreement program. Only two counties have used the contract program.

Under the provisions of Sections 422 and 423 of the Revenue and Taxation Code, land under contract must be valued for assessment without the use of sales data. In order for land under agreement to

qualify for such assessment the agreement must provide restrictions, terms and conditions which are substantially similar or more restrictive than required by law for a contract.

Since the method of valuation provided by Section 423 is highly desired by landowners, the terms of most agreements between counties and landowners have been almost identical with a contract. The only consistent exception is the elimination of the role of the Director of Agriculture from such agreements. However, the question of what constitutes "substantially similar" remains unanswered in any of the statutes involved.

## RECOMMENDATIONS

In order to simplify the Act and bring it into conformity with practice as well as to eliminate the uncertainty of eligibility for use-value assessment, the Committee recommends that the California Land Conservation Act be amended to:

- (a) Make all agricultural land eligible for contracts.
- (b) Eliminate the provisions authorizing agreements.
- (c) Except for recommendations included elsewhere in this report, retain the present provisions relating to contracts.

### *2. Clarification of purposes of agricultural preserves*

Before land may be placed under a Williamson Act restriction it must first be included within an "agricultural preserve." Agricultural preserves are formed by local government. The function of an agricultural preserve is to designate the area within which the County intends to offer Williamson Act contracts.

The Land Conservation Act provided a procedure for establishing agricultural preserves which required public notice and hearings prior to taking action. While reference to the planning function was not explicit in the Act, most counties have consulted their planning staffs prior to acting upon requests to establish preserves and have taken such action in a manner consistent with the general plan of the county.

The Technical Advisory Committee as well as county officials responding to the Committee's questions recommended that the relationship of the Act to local planning be made more explicit.

## RECOMMENDATIONS

The Committee recommends:

- (a) That the establishment of agricultural preserves be required to be consistent with the general plan of the jurisdiction, and
- (b) That on and after January 1, 1971, only counties having a general plan be permitted to establish agricultural preserves and contracts.
- (c) That any application to establish an agricultural preserve be referred to the Planning Department of the City or County, and that the Planning Department be required to submit within thirty days a report on the proposal, including a statement that the preserve is either consistent or inconsistent with the general plan.



### 3. *Minimum Preserve Size*

The Act required that for a contract to be executed upon prime land the land must be within a preserve of at least 100 acres. No such requirement was made where agreements were concerned. While many counties have established minimum size requirements for preserves, others have not done so.

One of the purposes of the 100 acre minimum preserve was to require that an area must be of significant size, even though it might be necessary for several owners to combine their acreage into one preserve. Landowners, however, have preferred to avoid any of the complications that might result from multiple ownership of land in preserves and have sought so-called one owner preserves. Most counties have agreed to this request and have established preserves that coincide with the area to be placed under agreement.

Nevertheless, the Land Conservation Act was enacted to serve a useful purpose for commercial agricultural land. The Committee is of the opinion that for this purpose to be achieved, a minimum acreage should be established as a prerequisite for the execution of a contract under the Act.

### RECOMMENDATION

The Committee recommends that the 100 acre minimum size for agricultural preserves be maintained and that inclusion in such a preserve be made a prerequisite of the execution of a contract under the Act, regardless of the quality of the land.

### 4. *Restriction of Land In Preserve but Not Under Contract*

The Act has provided that the use of any land within a preserve containing land under contract but which was not itself under contract, should be restricted by agreement or other suitable means to agricultural uses and uses compatible with agriculture. The purpose of this requirement is to assure the owner of land under contract that the local government with whom he has contracted will not permit uses of other land within the preserve that will be incompatible with agriculture.

The Committee recognizes that such a requirement may influence local government not to include land within preserves other than that under contract in order to avoid the complications that may result from doing so. The Committee also recognizes that such a requirement may influence owners not intending to enter contracts to try to avoid having their land included within a preserve.

Nevertheless we are of the opinion that not only is the contracting landowner entitled to such protection but that it is important for the Legislature to make it clear that other land use action of a county should be consistent with that taken pursuant to the Land Conservation Act.

### RECOMMENDATION

The Committee recommends that the Act be amended to require that within two years of execution of a contract on land within an agricultural preserve, the use of all other land within the preserve but not under contract must be restricted by zoning or other suitable means to agricultural use or uses com-



patible with agriculture. The Committee also recommends that the Act be amended to provide that failure to so restrict such land shall not be cause for cancellation or invalidation of any contract.

5. *Consolidation of Agricultural Preserve Provisions into Separate Article.*

The provisions in the Act relating to agricultural preserves are scattered throughout several articles and are somewhat disorganized.

RECOMMENDATION

The Committee recommends that all provisions relating to the establishment or administration of agricultural preserves be placed in a separate Article.

6. *State Compensation of Counties for Prime Land Under Contract*

As the Land Conservation Act is now written, the State is obligated to pay participating counties \$1.00 for each acre of prime land within the county which is subject to contract.

The purpose of this compensatory payment was threefold. First, it provided for state participation in the program and recognized the interest of the state as a whole in the preservation of prime agricultural land. Second, it offered an incentive for counties to use the program. Third, it was intended to partially offset the administrative costs and possible loss of tax revenue resulting from use of the program.

The latter two objectives of the dollar per acre payment provision were not realized. Counties were not persuaded to offer only contracts on prime land. Instead, counties overwhelmingly used the agreement procedure which involves no state contribution.

The counties have given a number of reasons for their reluctance to use the contract procedure. The Committee's survey indicated that one reason for not using the contract procedure was that landowners preferred agreements. It would appear that the desire to limit state government's role in the program underlies the preference of both counties and landowners for the agreement procedure, and that the possibility of receiving \$1.00 per acre for land under contract is not sufficiently attractive to counties to cause them to offer only contracts on prime land.

To date only two counties have executed contracts. Out of the more than two million acres under the Williamson Act, only 2,084 are covered by contracts.

In 1968 the Director of Agriculture refused to approve any new contracts without conditioning the state's obligation to pay the \$1.00 per acre upon the availability of funds.

It was apparent that the state's financial obligation under this provision had been underestimated in the Governor's Budget for 1968-69. The administration nonetheless refused to request an augmentation of the budget to meet the state's financial obligation.

RECOMMENDATION

The Committee recommends that the provision requiring the State to pay counties or cities \$1.00 per acre for land under contract be repealed. Notwithstanding this recommendation, the question of state participation in sharing the cost of this and other Article XXVIII programs remains under investigation.

### *7. Offset Payments to Landowners*

As presently written, the Act requires the county to make certain payments (.05 per \$1.00 of assessed valuation) to landowners whose land is subject to Williamson Act contracts and whose assessed valuation has increased due to non-agricultural factors. The provision was placed in the statute to encourage the owners of prime land to participate in the program. It was also meant to guarantee these landowners that once they restricted the use of their land, any increase in tax due to non-agricultural factors would be offset by such payments. At the same time it was designed to remove any motivation for counties to impose assessments upon restricted land which reflected non-agricultural uses.

In 1967 the Legislature added Sections 421-425 to the Revenue and Taxation Code (A.B. 2011). These sections require the county assessor to value contractually restricted land in a way which considers only agricultural income from the land. The assessor has thus been foreclosed from using market data in the assessment process.

Because of the effect of these sections and the fact that few contracts have been executed, the county to landowner payment provision has never been invoked. It has not been a significant incentive to the owners of prime land who continued to prefer the agreement program. In the opinion of the Committee, the restrictions imposed upon local assessors by A.B. 2011 afford sufficient safeguards to participating landowners to justify the discontinuation of this provision.

### RECOMMENDATION

The Committee recommends that the provision requiring payments by the county or city to the landowner be repealed.

### *8. Reduction of the Role of the State*

As the Land Conservation Act is presently written, the Director of Agriculture is responsible for the approval and enforcement of contracts as well as certain ministerial functions. This was originally considered desirable for two reasons:

- (a) Because of the financial obligation of the State it was important to have a State Agency bear some authority and responsibility over the program.
- (b) In order to insure against abuse of the cancellation procedure, the Director of Agriculture was given the responsibility for making final approval upon recommendations by the State Board of Agriculture.

Both counties and landowners have indicated that one of the principal reasons for their choice of the agreement program over the contract procedure was the more limited role of the State in the agreement program.

This Committee has recommended above that the State's financial participation in this program be temporarily suspended. In addition, counties have not demonstrated any laxness in these decisions. Only one cancellation has been approved to date.

Local governments have demonstrated a preference for having decisions which now involve the State made on a purely local level. There appears to be little reason for the State to continue to exercise over local programs the degree of control which now resides in the Director of Agriculture.

In the past year the State has been unwilling to fully meet its commitments under this program. The State has, for example, repudiated its statutory obligation to pay counties one dollar for each acre of prime land within their counties which is subject to a Williamson Act contract. In addition, the State has refused to approve certain new contracts, necessitating legal action by the landowners to have their contracts with the county recognized for assessment purposes. (See *Bryant, et al. v. County of Kern and Earl Coke as Director of Agriculture*, No. 102833, Superior Court, Kern County, June 1968.)

For these reasons this Committee deems the continued presence of the Director of Agriculture as a party to Williamson Act contracts to be no longer necessary.

### RECOMMENDATION

The Committee recommends that the Director of Agriculture be relieved of certain burdens which are presently assigned to him under the Act.

#### 9. *Contract Term Longer Than Ten Years*

Section 51244 provides that each contract shall be for an initial term of ten years and that the term shall be extended for one year on each anniversary of the contract.

Several counties have indicated a desire to offer contracts for an initial term of more than the usual ten years. Indeed, at least one county is already doing so. There is little doubt that such contracts are legally permissible under present statutory authorization. It would be useful, however, to clearly spell out this authority in the Act itself.

By clarifying this issue local governments would be encouraged to specify terms which would more nearly meet their local needs. At the same time landowners may be able to derive advantages which they feel are possible only when the restriction on the use of their land is significantly longer than ten years.

The usual length of a contract, however, is ten years. The provisions of the Act regarding automatic extension and nonrenewal are keyed to ten year contracts. It would be difficult to apply these provisions to a twenty year contract without requiring a twenty year expiration period also.

The Committee is of the opinion that local governments and landowners should have the authority to deviate from these provisions when the initial term of the contract is for twenty years or more.

### RECOMMENDATION

The Committee recommends that the Act be amended to:

- (a) Make it clear that the initial term of contracts may be longer than ten years.
- (b) Allow a contract having an initial term of twenty years or more to provide that the automatic extension of the contract shall not begin until the end of the tenth year of the contract.

#### 10. *Local Government Report to State*

The Land Conservation Act along with the Article XXVIII assessment provisions which relate to it comprise a statewide open space program. Implementation of the Act by local governments is only possible through legislative sanction.

The Legislature as well as the executive branch of state government is concerned with the method and extent of local implementation of the Act. Use of the Act by local governments affects such state programs as state subventions to school districts and inter-county equalization.

In view of this statewide concern, the Committee deems it important that certain vital information be made available to appropriate state agencies. This information is needed to measure the impact of local Land Conservation Act programs upon other areas of state responsibility. It is important also to measure the effect which local programs may have upon other taxpayers as well as those governmental agencies which either rely upon the property tax for revenue or are affected by changes in the assessed valuation of land.

To achieve this objective the Committee considers it necessary to establish a means by which state agencies having a direct interest in the use of the Act may be apprised periodically of the extent and consequences of local Land Conservation Act programs.

#### RECOMMENDATION

The Committee recommends that counties or cities having land under contract be required to report annually to the State Board of Equalization and the Director of Agriculture the following information for each school district affected:

- (a) Number of acres of land under contract during the preceding fiscal year.
- (b) Number of acres of land under contract for first time during current fiscal year.
- (c) Total number of acres of land under contract during current fiscal year.
- (d) Difference between Assessed Valuation of land in each district and its Assessed Valuation as it would have been had there been no land under contract.

#### 11. *Elimination of 51% Veto*

Section 51285 of the Act now provides that "No contract may be canceled if the owners of 51% of the . . . preserve . . . protest such cancellation". The principle effect of this provision has been to cause local governments and landowners alike to favor single owner preserves.

One purpose of the preserve was to establish a general area within which land use was to be confined to agriculture. By encouraging single owner preserves this provision has also discouraged the use of preserves as planning units.

Before local government may grant a cancellation it must first find that such cancellation would be in the public interest. In view of this finding it would seem anomalous to allow individual landowners to



thwart the desire of both government and the landowner to cancel the contract.

The 51% protest provision has not been necessary as a check against capricious use of the cancellation procedure. The grounds for which cancellation may not be granted seem adequate to safeguard the public interest. At the same time the Committee recognizes that a cancellation could have a profound impact upon other landowners within the preserve. The Committee deems it sufficient, however, to allow all such landowners to protest the cancellation of any contract within their preserve either in writing or in person.

## RECOMMENDATION

The Committee recommends that provisions of the Act which allow cancellation of a contract to be vetoed by protests of 51 percent of the owners of land within the preserve be repealed, and that provisions be enacted allowing protests of each owner to be presented at the hearing or in writing prior to the hearing.

## II. EXTENDING THE LAND CONSERVATION ACT

### A. Background Information

The Land Conservation Act was originally drafted to halt the loss of California's prime agricultural land. The Legislature quickly realized, however, that all agricultural land was in need of the same protection which the program offered to prime land. Presently all agricultural land, regardless of soil quality, is eligible for inclusion within the program. The support of Proposition Three by the Legislature and electorate indicated a recognition that the need for similar protection is not limited to agricultural land. The Committee's study will give consideration to each of the categories of open space land enumerated in Article XXVIII. However, of the many categories of open space land which may be considered to need the protection of Article XXVIII use-based assessment, two stand out for immediate attention. These are: (1) land in selected wildlife habitat areas, and (2) land located within a scenic highway corridor.

Mr. Trevenen Arthur Wright of the Department of Fish and Game testified at the Committee's April 16, 1968 hearing that "(W)ildlife is a product of the land as are agricultural crops and . . . the utilization of wildlife must be provided for in the development of a program for the taxation of open space lands . . . Private land is extremely important to California's wildlife populations. If private landowners are discouraged from producing and utilizing wildlife, not only will the total numbers of wildlife decline drastically, but utilization will be concentrated on publicly owned areas which in turn will degrade in quality and quantity."

"The Department of Fish and Game is concerned with the present tax problems faced by owners of undeveloped or natural areas who are being forced into development, or to sell for development, to meet the increasing tax assessments. This situation is particularly critical along the coast where the number of coastal marshes and lagoons have been



reduced to a remnant of what once existed and the remaining areas are threatened. These marshes support many species of bird and marine resources, some of which we believe cannot withstand further reduction in numbers without a serious threat of extinction . . . Unless provision is made in our planning by wise actions such as are made possible by this Act, all of the Southern California coast will soon be devoid of wildlife areas."

Several witnesses have testified before the Committee concerning the State Scenic Highway program. In a letter to the Committee, James Moe, now Director of the Department of Public Works, wrote: "In 1963 the California Legislature established the State Scenic Highway System. In selecting highways for inclusion in this system, the Legislature carefully chose state highways that pass through areas possessing certain scenic characteristics. As an essential part of the program, the Legislature endeavored to encourage local effort to impose local zoning controls in order to assure the preservation of the attractiveness of the corridors through which such scenic highways pass."

The following discussion of the State Scenic Highway System took place between Mr. Tom Carroll, of the Department of Public Works, and John C. Williamson, Executive Director of the Committee on Open Space Lands, at the public hearing of March 12, 1968:

**Mr. Carroll:** We have two segments (of scenic highway) officially designated. We have two more that we anticipate will be designated within coming weeks, and we have several dozen that are now under consideration.

**Mr. Williamson:** Are you meeting resistance (to land use restrictions within the scenic corridors) that you wouldn't classify as normal resistance?

**Mr. Carroll:** No, I think it is reluctance that is to be quite expected. This is a pioneering effort, we're ahead of the rest of the country on this program . . .

**Mr. Williamson:** Is the reluctance—the resistance—coming from the counties or from the owners of the land?

**Mr. Carroll:** . . . the Supervisors reflect the feelings of their constituents, and I think it's joint reluctance that we sense.

**Mr. Williamson:** Is any of this reluctance based, in your opinion, upon the fact that you can give no guarantee to the owner of the restricted land that his land will be assessed according to the restriction?

**Mr. Carroll:** That is correct. In most instances, the controls have been imposed strictly through the police power by zoning.

**Mr. Williamson:** And the assessor doesn't pay much attention to that, does he?

**Mr. Carroll:** No, he doesn't . . . zoning couldn't possibly carry out the total scenic highway implementation. I don't think that the Legislature ever anticipated that the entire master plan of highways throughout the State would be effectively carried out under these (zoning) controls . . .

**Mr. Williamson:** You think to be able to restrict this land under an agreement that will give a guarantee that the land will be subject to such an assessment as is now given agricultural land would help the situation?

**Mr. Carroll:** Yes, we feel that the property owners and the local government would be more interested in sitting down and working out an agreement rather than appearing before board meetings to work out zoning ordinances.

Extending Land Conservation Act protection to wildlife habitat and land within a Scenic Highway corridor would add a new dimension to two presently existing state programs. It would allow qualified landowners to voluntarily restrict the use of their land to uses compatible with the public goals of these respective programs.

### RECOMMENDATION

The Committee recommends that land within state designated wildlife habitat areas and Scenic Highway corridors be made eligible for Land Conservation Act contracts.

We propose also that similar treatment should be accorded land encompassed by the National California Coastal Scenic Redwood Road and Trails System, should that program be adopted by the Legislature.

## III. ASSESSMENT OF OPEN SPACE LAND

### A. Background Information

Article 1.5 (commencing with Section 421 of the Revenue and Taxation Code) denied both the county assessors and the State Board of Equalization, in their triennial survey, the use of sales data in valuing open space lands subject to enforceable restrictions. However, the Act does not spell out either a method or a standard for valuing such lands.

The Committee's survey disclosed that of the twenty-three counties which have signed agreements pursuant to the Land Conservation Act, all but two have followed the provisions of Section 423, i.e., they have not used market data. One of the two remaining counties indicates that it will follow these provisions beginning January 1, 1969. Inasmuch as replacement cost is of no value in appraising land, assessors by being denied the privilege of using sales data have been forced to arrive at value by capitalizing income.

The survey conducted by the Committee revealed that there was a great deal of variation in the capitalization rates used by assessors in making valuations for the 1968-69 assessment year. Six assessors used 7% and five used 8½%, with six others ranging between these rates. One each used 5, 6, 9 and one, 6-9.

No information is available on the method of determining the income used for capitalization in the various counties. The Committee, however, assumes that assessors developed an average per acre income rate which in their opinion could be realized through prudent management of land in a use legally permissible under the restriction.

The principal concern expressed by landowners to the officials of the counties implementing the Williamson Act appeared to center around the landowners' desire to know, definitely, before entering the agreement, how their land would be valued once it was subject to the restriction.

The Committee considers this to be a significant weakness in the statutory structure. A difference of one percent in the capitalization rate can make a substantial difference in the amount of tax due.

*For example:*

If the income expected from a certain acre of land is \$100 and this is capitalized by using a rate of 8%, it will indicate a value of \$1,250 per acre. Using a 25% ratio, a \$312.50 assessed value would result. If the tax rate is \$8.00 the tax due would be \$25.00.

Using the same income of \$100 and a 7% capitalization rate, the value would be \$1,428. The assessed value would be \$357, which at the \$8.00 tax rate would require a tax of \$28.56, 14% greater.

In the Committee's survey 28 of the counties expressed the view that the Legislature should provide guidelines for the determination of capitalization rates.

A number of witnesses at the Committee hearings expressed a similar view.

## RECOMMENDATION

The Committee recommends that Section 423 of the Revenue and Taxation Code be amended to:

- (a) Establish capitalization of income as the method of valuing land subject to any enforceable restriction authorized by the Legislature pursuant to Article XXVIII.
- (b) Provide guidelines to be followed in determining the income to be capitalized with a minimum annual income of \$2.50 per acre.
- (c) Provide guidelines for determining the capitalization rate to be used.

## IV. ASSESSMENT OF LAND DURING EXPIRATION PERIOD

### A. Background Information

Section 423 of the Revenue and Taxation Code governs the valuation of open space land for assessment purposes. This section denies the State Board of Equalization for purposes of its triennial surveys and county assessors the use of sales data in the valuation process. The effect of this denial is to place the assessment upon a use-value basis and to require assessors to use the capitalization of income method.

In order to qualify for this method of assessment the land must be subject to one of the enforceable restrictions specified in Section 422 of the same Code.

The enforceable restrictions specified in that Section are the following:

- (1) A contract executed pursuant to the California Land Conservation Act.
- (2) An agreement executed pursuant to the California Land Conservation Act where the terms of the agreement are substantially similar to those required for a contract or are more restrictive.
- (3) A scenic easement deed or other instrument executed pursuant to Section 6950, et seq., of the Government Code, where the

terms of the deed or instrument are substantially similar to those required for a contract or are more restrictive.

Section 422, however, provides that the restrictions upon the board or assessor shall not apply during the expiration period of the enforceable restriction. When the owner of the land serves a notice of nonrenewal of a contract or agreement the expiration period begins immediately. When the county or city serves a notice of nonrenewal upon the landowner the expiration period begins six years before the expiration of the contract or agreement. In the case of a scenic easement deed or other such instrument the expiration period begins six years before its expiration date.

The rationale of this provision is that when these points have been reached, the restriction upon the use of the land can no longer be presumed to extend beyond what is now a fixed expiration date.

The effect of this provision is to free the board and the assessor from the restraints of Section 423 and permit them to value land according to other statutes and a different article of the Constitution. In so doing the board and the assessor would necessarily use sales data. They would be governed by Section 402.1 which requires them to take into consideration any restriction upon the use of the land, including the effect of the remaining life of the contract, agreement, or deed.

Concern has been expressed by landowners that there is great uncertainty as to how land will be assessed during this period. There is no assurance that assessments will be arrived at through a uniform procedure.

Nevertheless, once it becomes clear that at an established time the land will be free of the restriction, it is appropriate that the present worth of the future unrestricted value of the land be considered in the valuation process.

It is equally appropriate that consideration be given to the effect of the restriction upon the use to which the land can be put.

## RECOMMENDATION

The Committee recommends that legislation be enacted which will provide a specific method to be used by the State Board of Equalization and county assessors in valuing open space land during the period preceding termination of the enforceable restriction. Such legislation should require that consideration be given to the present worth of the fair market value of the land as it will be at such time as it is free of restrictions, and to the effect of the restriction upon the income producing capability of the land.

## V. OPEN SPACE EASEMENT ACT

### A. Background Information

In 1959 the Legislature enacted Sections 6950-54 of the Government Code. These sections authorized counties or cities to acquire by any of a variety of methods "the fee or any lesser interest or right in real property to acquire, maintain, improve, protect, limit the future use of or otherwise conserve open spaces and areas within their respective jurisdictions."



No direction was given local government in the implementation of this authority. While it was assumed that the assessment of such property would be influenced by the fact that the owner of such property retained less than fee simple title, the act itself offered no such assurance.

Little, if any, use was made of this authority prior to the enactment of A.B. 2011 (1967 Regular Session). However, that Act (Sect. 422 and 423, Revenue and Taxation Code) provided for assessment on the basis of use where the instrument under which the right or easement was acquired, "taken as a whole, provides restrictions, terms, and conditions which are substantially similar or more restrictive than those required for a contract" by the California Land Conservation Act of 1965 (Chapter 7, commencing with Section 51200 of Part 1 of Division 1 of Title 5 of the Government Code).

Since the passage of A.B. 2011, three counties have executed such deeds or instruments and have described them as "scenic easement deeds." This designation appears only in Section 422 (Revenue and Taxation Code.) It does not appear in the enabling legislation (Section 6950, et seq.)

Because of the disuse of these sections and because the use of the California Land Conservation Act is limited to agricultural land, the Citizens Technical Advisory Committee recommended a new statute authorizing cities and counties to accept grants of open space easements on land meeting open space specifications.

This Committee has studied this proposal and believes that it will provide an adequate and desirable method for restricting the use of open space land for the purposes contemplated in Article XXVIII of the State Constitution.

Briefly, its provisions

- (1) Include a definition of a "grant of an open space easement."
- (2) Provide for a minimum term of twenty years.
- (3) Require a covenant that the parties will not construct any improvements except as expressly reserved in the grant and which may not materially impair the open space character of the land.
- (4) Require a finding by the governing body that the preservation of the land is not inconsistent with the general plan of the city or county.
- (5) Forbid issuance of building permits for structures which would violate the easement.
- (6) Require a finding that the preservation of the land is in the public interest for reasons specified in the act.
- (7) Permit enforcement by injunction.
- (8) Permit extension of the term of the easement.

The Committee is of the opinion that the restriction upon the use of such land if properly drafted would be of such permanence and stability as to warrant classification as an enforceable restriction within the meaning of Article XXVIII.



## RECOMMENDATION

The Committee recommends the enactment of legislation authorizing cities and counties to accept grants of open space easements on land found by the legislative body to warrant preservation in the public interest. The Committee further recommends that such legislation contain provisions which will warrant a determination by the Legislature that it is an enforceable restriction within the meaning of Article XXVIII of the State Constitution.

## VI. ZONING AND ARTICLE XXVIII

*A. Background Information*

In recent years the proposal has been made with increasing frequency that the Legislature give the same sanction to conventional zoning which it has already given to the Williamson Act. In the hearings held last year by the Joint Committee on Open Space Lands nearly every witness advocated expanding the use of zoning in one way or another.

The proposal that zoned land should be assessed in the same way as land subject to the restrictions recognized in A.B. 2011 raises several difficulties:

First, in so doing, the Legislature would deprive the assessor of his most convenient and irrefutable index of value, i.e., sales data on comparable land.

Second, the Legislature would be deciding that for assessment purposes, the value of zoned land is the value attributable to the legally permissible uses.

Third, such a decision would imply that the amount of tax load shifted to other taxpayers equals the public value of open space.

Fourth, the Legislature would be compelled to face the problem of legal impermanence. It would be difficult to remain mute on the question of local government's inability to bind itself and its successors to a given course of action. Unless this issue is resolved, the public will have no assurance that the open space land will remain open for a period of time sufficient to justify the tax shift resulting from use-based assessment.

When we speak of zoning for open space we normally refer to some form of agricultural zoning. Before according this sort of zoning use-value assessment, it would be helpful to examine the way in which it is used in California.

A recent survey conducted by the Joint Committee on Open Space Lands revealed that of the counties which use exclusive agricultural zoning, thirty-eight said they would not impose exclusive agricultural zoning in opposition to the wishes of the landowner. Seven counties said that they would.

The same survey revealed that today some 9,952,128 acres of land are subject to exclusive agricultural zoning. That amounts to about five times the amount of land which is now subject to Williamson Act restrictions. If the Legislature were to mandate the assessor to treat land subject to exclusive agricultural zoning on an equal footing with land subject to Williamson Act restrictions, the impact upon many local tax bases would be severe.

The zoning system as it is practiced in California has never been seriously influenced by property tax considerations. The local governments which drafted the existing zoning ordinances did not do so with the advice and consent of the State Board of Equalization or the local assessor. They had no notice of the potentially important tax consequences of zoning land in one way or another. The Legislature should be hesitant to expect zoning restrictions which were adopted solely as part of the planning process to also play a new role in property tax assessment.

## RECOMMENDATION

The Legislature should not consider any form of traditional zoning sufficiently viable to warrant use related assessment under Article XXVIII.

It is the view of this Committee that land use regulation through an exercise of the police power must be tied to long-range planning as well as uniform standards and procedures in order to justify Article XXVIII assessment. By injecting these factors along with some form of State overview into the open space program, the shortcomings of zoning may be avoided.

Accordingly, the Committee will continue to investigate potential uses of the police power which could warrant a legislative grant of use related assessment.

## VII. IMPACT OF WILLIAMSON ACT UPON SCHOOL DISTRICTS

When land is made subject to Land Conservation Act contracts or agreements it is assessed according to its income producing value. Since the market value of nearly all farm land in California reflects non-agricultural values, the result of income valuation is normally to reduce the assessed valuation of the restricted land. This, in turn, results in a decrease in the property tax.

This may result in an erosion of the tax base. At the county level this erosion is usually slight. The reason for this is that: (1) only a small percentage of the tax base is likely to be affected, and (2) development within the county is more likely to be directed away from the restricted land than prevented altogether. In smaller taxing jurisdictions this impact will be less easily absorbed. If these smaller taxing districts wish to produce the same amount of revenue as that which would have been produced under market valuation, the tax rate must be increased.

In the last fiscal year the Committee conducted an exhaustive research project in counties having land restricted under the Act. The purpose of this survey was to measure the impact of the Land Conservation Act upon the tax base of school districts.

The results of that survey reveal that the effect of the Act upon countywide tax rolls during 1968-69 was minimal. The percentage difference in the total county assessed valuation in all but one county was one percent or less. And unlike school districts, counties are free to increase their tax rates in order to raise needed revenue.

School districts are smaller than counties. They are therefore more vulnerable. The smaller non-unified districts are the most vulnerable of all. But despite these built-in hazards, the effect of the Act upon the majority of school districts was slight. Even in many districts where

the *percentage* difference in assessed valuation resulting from the counties' use of the Act is large, the overall effect upon the district does not impose an educational tax burden which is equal to that borne in the majority of school districts in the State.

But while the effect upon the broad majority of school districts has thus far been slight, there are notable exceptions. In a few isolated instances the effect has been to increase already high tax rates. Certain of these districts are already taxing at statutory or voted maximum tax rates. These districts are powerless to increase tax rates in order to maintain revenue levels.

#### RECOMMENDATION

The Committee recommends that legislation be enacted to empower counties to provide financial assistance to any elementary, high school or unified school district which is unable to maintain the level of its educational program due to an overall decrease in assessed valuation which is attributable to the restriction of land within the district pursuant to the California Land Conservation Act.

## CHAPTER THREE

# OPEN SPACE ASSESSMENT IN CALIFORNIA

## INTRODUCTION

To understand the issues which are involved in the area of open space land and use related assessment, one must first understand the nature of assessment generally. One must also understand the way in which the Legislature has governed the assessment of open space land in the past. An understanding of present law as well as its historical evolution require, in turn, an understanding of the policies which have guided the Legislature in its formulation of an open space program. The following section is intended to provide the historical and theoretical matrix within which the previously discussed issues fit.

## HISTORY OF OPEN SPACE LAND ASSESSMENT

Like most states, California has always assessed land for tax purposes according to its market value. The pace of California's growth has caused market value assessment to play an important role in shaping this development. As California grew from an agrarian to an urban culture, the correlation between property taxes based upon market value and the ability of the land to generate income needed to pay the tax became less predictable. With increasing frequency land-owners discovered that the annual property tax bill exceeded the gross return from the land.

## SECTION 402.5

The first legislative step toward ameliorating this condition was taken in 1957. Section 402.5 was added to the Revenue and Taxation Code.<sup>1</sup> As later amended, that section said that where land is zoned for exclusively agricultural, airport or recreational purposes, the assessor could only consider factors relative to the uses of the land. It did not get away from market value assessment. It did, however, force the assessor to consider the highest and best use which is *legally available* as well as those for which it is *naturally adapted*.<sup>2</sup>

The assessor was only mandated to consider the legally available uses to the extent that there was "no reasonable probability" that the land would be rezoned for a use which would increase the value of the land. For the assessor to decide whether a "reasonable probability" existed that the zone would not be changed, he had to look at the history of zoning in his jurisdiction. Zoning restrictions judged by the yardstick of history all too often failed to withstand the assessor's harsh scrutiny.

*Section 402.5 Revenue and Taxation Code:*

Bill Number: S.B. 1637, 1957 Regular Session

Author: Senator George Miller, Jr.

Enacted: 1957

Amended by: S.B. 439, Teale, 1959 Regular Session

A.B. 3128, Williamson, 1965 Regular Session

Repealed by: A.B. 80, 1st Ex. Session 1966.

*Wild Goose Country Club v. Butte County*, 60 Cal. App. 339, 212 P. 711. *De Luz Homes v. County of San Diego* (1955), 45 Cal. 2d 613, 290 P. 2d 544 at 554.



The constitutionality of 402.5 was soon put in issue. The Attorney General construed 402.5 as simply restating existing law. The rationale of this opinion was that if the restriction placed upon the use of the land by zoning ordinance amounted to a real restriction, it would have a depressing effect upon the market value of the land. The assessor, basing his assessment upon market value, would properly arrive at a proportionately lower assessed value.

In practice, assessors felt constrained to discount zoning in valuing land. They did so on the ground that zoning had no effect upon market value and therefore did not justify lower assessed valuation. The reason that zoning failed to have an effect on market value, according to the assessor, was that buyers knew that the restriction could be removed in one way or another when they, as landowners, desired to convert the use of the land. To buttress this argument, assessors pointed out that even if the ordinance were strictly administered, no legislative body has the power to restrict its exercise of legislative power in the future. It follows, therefore, that a legislative body may not bind its successors. From this, assessors concluded there was no assurance that a future legislative body would not either rezone a given parcel of land or, for that matter, repeal the ordinance altogether.

The amendment of 402.5 in 1965 erected a rebuttable presumption that a zoning ordinance enacted pursuant to a general plan of land use was permanent. This amendment shifted the burden of proof to the assessor. It then became necessary for the assessor to establish the likelihood of rezoning on a case by case basis.

This relieved the owner of land seeking to have the assessment of his land relate to the restriction placed upon its use by the zoning ordinance of an impossible burden. Nevertheless, the assessor remained free to ignore the effect of zoning where the facts warranted it.

#### SECTIONS 6950-4 GOVERNMENT CODE (SCENIC EASEMENT DEED ACT)<sup>3</sup>

While it was not intended as a vehicle to provide justification for use-value assessment, the enactment of Sections 6950-4 of the Government Code is mentioned here as the legislative act next in the sequence of related laws.

California's scenic easement act<sup>4</sup> allowed local governments to acquire in virtually any way possible,<sup>5</sup> temporary or permanent developmental rights in real property. It empowered cities and counties to acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas of public use and enjoyment.

<sup>3</sup> Sections 6950-4 Government Code (Scenic Easement Deed Act)

Bill Number: S.B. 1461, 1959 Regular Session

Author: Senator Fred S. Farr

Enacted: 1959

<sup>4</sup> Chapter 12, Sections 6950-4 nowhere uses the words "scenic easement". To the Committee's knowledge, the term scenic easement is not defined or used in the Government Code, except in Section 7000.

<sup>5</sup> Eminent domain is not enumerated among the list of permitted means of acquisition. But see A.B. 1798, Z'berg, 1968 Regular Session. It would have added Section 5163 to the Public Resources Code rather than to the Government Code. If passed, it would have provided that "Any county or city may acquire real property for use as a scenic easement through the exercise of its power of eminent domain".



Unlike much of California's other open space legislation, the justification for scenic easements is, as its title would imply, non-economic. Economics does furnish, however, a secondary rationale for their use. Landowners may, under certain conditions, prevent developmental pressures from arising. This may be done by giving up the rights to develop land before developmental pressure begins to manifest itself. By tying up the use of the land, development will normally be channeled to other areas. Land values are thereby stabilized and local government may be able to purchase the remaining interest in land at a future time at a lower price.

Presently the scenic easement act does not permit local government to employ eminent domain to acquire developmental rights to land.

To date, the scenic easement mechanism has not been widely used. The major reason for this is that in the case of undeveloped land, the developmental value closely approximates the entire value of the land in fee. Stated differently, where land is undeveloped, a major factor in its value lies in its potential for development. Since it is that very potential which the landowner is giving to government, he may well be conveying away nearly all of the value of the land. In the case of a bona fide sale (as opposed to a gift, bequest, etc.) the county may as well buy the fee as the scenic easement. This is far less true of remote land than of land in the rural-urban fringe area.

The second, but no less important, explanation for the paucity of landowners willing to convey developmental rights stems from the absence of any tax advantage. The scenic easement act provisions are found in the Government Code, not in the Tax Code. Nowhere in the 6950 sections is there any mention of tax consequences.

In 1959, when these sections were adopted, Section 402.5 of the Revenue and Taxation Code was two years old. Section 402.5 had little effect on assessors. Section 6950 could not be expected to have such an effect when it was neither in the Tax Code nor tied to assessments. A legislative determination that values were really intended to change and that assessment methods were intended to be affected would have given needed incentive to landowners. Despite the fact that 6950 divestitures have always been entitled to assessment consideration, new direction was needed if they were to assume an important role in open space conservation.

Assembly Bill 2011 and especially Section 422 of the Revenue and Taxation Code discussed later, promises to have a significant effect on the use of the scenic easement act. With the advent of favorable tax assessment, new life may have been breathed into the scenic easement device, in which event there is reason to believe that easements will play an increasingly important role in land use planning.

#### PROPOSITION FOUR <sup>6</sup>

In 1961, the Legislature proposed a constitutional amendment which appeared on the ballot in the General Election of 1962 as Proposition Four.

##### <sup>6</sup> *Proposition Four*

Bill Number: A.C.A. 4, Regular Session 1961

Authors: Hon. Paul Lunardi, Winton, Garrigus, Holmes, B. F. Allen, Beaver, Belotti, Carrell, Coolidge, Cunningham, Hegland, Hicks, House, Lowrey, Nisbet, Pattee, Schrader, Sedgwick, Waldie, Z'berg.

This measure would have allowed local government to assess agricultural land on the basis of that use. The purpose of Proposition Four was to alleviate tax pressure on agricultural land in order to reduce premature development. The theory was that by assessing farm land on the basis of its actual use rather than its highest and best use (potential developed use), the landowner would be in a position to continue farming and to control the timing of development free of the pressure of taxation.

In the event that the use of the land was converted from agriculture, the deferred tax for the preceding seven years would immediately fall due. To compute that deferred tax, the assessor would have had to make a dual assessment. The land would be valued on its lower agricultural use value as well as its unrestricted market value. The amount of deferred tax which the county would recoup, in the event of changed use, was measured by the difference between the tax actually paid and the tax which would have been paid in the seven years preceding the conversion had the land been taxed on the basis of its full cash value. The deferred taxes were, in other words, measured by the taxes on the assessed valuation in excess of the agricultural value.

Proposition Four would not have been self executing. Each county would have had an option to enter the program. To do so, the Proposition required the adoption of a local ordinance. Once the program had been adopted by ordinance, the county would have been bound to extend its benefits to all qualified applicants or none at all. Given an adopting ordinance, the landowner had exclusive unilateral power to enter or take himself out of the program.

From this lack of local selection it is clear that Proposition Four was designed to play no part in the planning process. This shortcoming together with a lack of flexibility and an absence of legislative authority to modify the program were among its most significant weaknesses.

Tax deferral has long been considered one of the most promising ways of preserving open space land while at the same time protecting the public from land speculators. By governments recapturing deferred taxes, land speculators are prevented from taking advantage of favored tax treatment at the expense of other taxpayers. However, the apparent advantages of the deferral system to the public are illusory for at least four reasons:

1. The speculator's cash flow is altered. His holding costs are lowered by a reduction in tax overhead. He is therefore able to speculate at a low cost and must pay his deferred taxes at a time when he is most able to afford it—when he realizes his gain by sale.
2. The speculator is able to work on public money since his taxes are shifted to other property owners.
3. If no interest is charged on the deferred taxes, the speculator is given what amounts to an interest free loan.
4. When there is a statutory limit to the tax rebate, the amount of deferred taxes which need never be paid can be substantial. The deferred taxes for each year over the seven year limit (as would have been the case with Proposition Four) amount to an outright grant to the speculator.

Proposition Four was California's only attempt at employing this device. The question of its desirability rests upon whether the guarantee of getting some of its money back is sufficient consideration for the public to receive as its part of the bargain.

Such a proposal has some shortcomings as a long range program. The deferred tax is really a latent lien against the land. As each year passes that lien grows. A point will come when the size of that lien will equal or exceed the value of the land. When that point is reached, the farmer would have no choice but to continue farming. While this might well serve the objectives of the community, to prevent such a condition, the farmer will determine the point beyond which the deferred taxes would not be permitted to erode his interest in the land. At this point he will do one of three things: (1) sell his land subject to the inchoate lien, (2) convert the use of his land, or (3) take his land out of the program and elect to be assessed on full cash value. It was to prevent this dilemma that the recapture was limited to a seven year pay back.

Had Proposition Four passed, it may have brought with it two conditions.

### **1. Leapfrogging**

The benefits to land owners of Proposition Four would have been most strongly realized in rural-urban fringe areas. It is these areas which present the strongest tax and other developmental pressures to the landowner. The landowner would have the advantage of being benefitted immediately, would not have to tie up the use of the land for any longer than he wished, thus retaining the ability to make his own decision to develop or sell the land without regard to local planning.

In such a context, landowners would tend to make use of the program on a broad scale. Widespread use, coupled with the counties' inability to choose among those parcels of land which they deem suitable for open space vis-a-vis development, would have the effect of reducing the pressure on fringe area landowners to develop their land. With this pressure removed, development might tend to leap over the fringe area to less expensive land beyond the fringe. Inasmuch as local government retained no control over which land was thus treated nor for how long, the leapfrogging pattern of uneconomic urban sprawl would have been exaggerated.

### **2. Highest and Best Use Valuation**

The apparent benefit to the farmer would prove in the long run to be illusory. In the final analysis, the assessment basis for taxes paid remains the same. The landowner is ultimately assessed on the highest and best—or fair market value of the land without the restriction as to use. Only the time of payment is changed. When the use of the land is converted from agriculture to some other use, then taxes which have been deferred over the last seven years fall due.

By temporarily lowering the farmer's assessment to the value as restricted, any inequities in the highest and best use assessment method are more likely to go unchallenged. In point of fact, the farmer is really being assessed on the highest and best value all along. Limiting the pay back to seven years alters neither the standard nor method of assessment. It merely limits the penalty for withdrawal. The result of this



sophistry is to legitimize the highest and best use method of assessment without squarely facing its concomitant inequities. Ignoring the inherent difficulties posed by this assessment standard would at once condone its continued use and forestall a realistic revamping of rural land assessment.

For good or ill, Proposition Four carried 37 counties but was rejected by a vote of 2,147,761 to 2,384,064.

#### 1965 SECTION 51200 GOVERNMENT CODE, CALIFORNIA LAND CONSERVATION ACT<sup>7</sup>

Following the failure of Section 402.5 to provide the sought for answer to the problems created by market value assessment of agricultural lands, and the failure of Proposition Four at the polls, the Legislature enacted the California Land Conservation Act of 1965 (Williamson Act).

The Williamson Act preceded Proposition Three by one year. It was therefore based on the constitutionally compelled "full cash value" standard discussed above. In light of that constitutional compulsion, it was not possible to include a specific assessment procedure which later was made possible by Article XXVIII.

In order to accomplish a similar end, various devices were used. Contractual use restrictions which would bind the owner of the land and his successors in interest were developed. The theory was that once the use of the land was legally restricted, the free market would set a realistic value on that land which would be based on its restricted use. Justification for that theory rests on the inability of either party to instantly terminate the restriction. Where zoning had been potentially terminable at any time, the Land Conservation Act provided restrictions with a fixed life. In the case of contracts, the minimum term was ten years and a minimum of nine years must separate the decision to change the use from the date of actual conversion.

The Williamson Act consists of two programs. The first program deals with "prime agricultural land", as defined by the statute, and the second deals with any agricultural land as determined by the city or county. Prime land may be put under "contract". Any land, including "prime", may be put under "agreement". Legally, both contracts and agreements are contracts, but must be distinguished as different instruments for the purposes of this Act.

To implement either program, local government must first establish "agricultural preserves". These preserves are somewhat like conventional zones in that they are an exercise of the planning function and express an intention to limit the use of prescribed land to agriculture. However, establishment of a preserve is not an exercise of the police power as is the establishment of a zone. It carries with it no sanction whatever. The purpose and effect of the preserve is to delineate the area within which local government intends to offer contracts or agreements. It delineates as well the area which local government intends to

<sup>7</sup> 1965 Section 51200 Government Code, California Land Conservation Act

Bill Number: A.B. 2117, 1965 Regular Session

Author: Assemblyman John Williamson, et al.

Enacted: 1965

Amended by: A.B. 1725, Assemblyman Alan Pattee, A.B. 1958, Assemblyman John Dunlap, Regular Session 1967

restrict to agriculture or to uses compatible with agriculture. The formation of a preserve implies an intent to so restrict even that land which is not placed under contract or agreement. The means by which local government should effectuate this latter purpose are not specified in the Act. A program of collateral zoning to augment the Williamson Act presumably would constitute one of the more desirable ways of fulfilling the intent of the statute. (See Sec. 51201 (d)).

Once the preserve has been established, either contracts or agreements may be offered to qualified landowners.

### CONTRACTS

Where contracts are offered, the terms of the contract offered must follow the detailed requirements spelled out in the Act. The subject land must be "prime land", as graded on a soil quality scale or as measured by its per acre dollar income. (See Sec. 51201 (c)).

If a contract is executed with any landowner in the preserve, the county must then offer similar contracts to all others in the preserve. Executed contracts run with the land so as to bind subsequent purchasers (Sec. 51243 (b)). They do not bind prior encumbrancers whose mortgage or trust deed was delivered prior to the making of the contract.<sup>8</sup>

Land under contract may be freely sold and divided. Where only part of the parcel is sold, it is, of course, subject to the terms of the original contract. The buyer is given a duplicate contract covering his land only, and he henceforth deals with the county independent of his grantor (seller). (Sec. 51243 (c)).

Each contract must be for a term of ten years. Each party has an annual option to renew the contract. Inaction exercises the option. The effect is to maintain perpetually a nine to ten year contract. Should either party choose not to exercise the option, an affirmative act is required. The party desiring termination must file a notice of non-renewal. (Sec. 51244).

Neither party to the contract may "buy his way out". Section 51252 gives the State Attorney General (presumably acting for the Director of Agriculture) the power to bring an action in equity to specifically enforce the contract against either party. The State may also enjoin any breach of contract. Those remedies available to the landowner are also available to the county. In addition, the county has a number of remedies outside the Contract not available to the landowner. For example, the county could enforce a use dedication requirement, refuse to approve a subdivision plat, or refuse a building permit.

The contract may be canceled (a method distinct from giving notice of non-renewal) only if certain conditions are found to exist. Opportunity for non-agricultural use is not grounds for cancellation. Sale of the land in whole or in part is not grounds for cancellation. Alternative use of the land may be considered *only* if there is no other land available for the non-agricultural use in the area. Uneconomic character of the agricultural use of the land may only be considered if the land is not suited for any sort of agricultural use.

<sup>8</sup> For an incisive and penetrating look at this problem, see Attorney General's Opinion No. 68/27, May 3, 1968 Appendix A *infra*.



If the above conditions are met and if all parties consent, then the contract may be cancelled if cancellation would be in the public interest. (Sec. 51281 and 51282)

Once a contract has been canceled, the landowner must expect to pay a fee of fifty percent of the new assessed valuation. This payment may be waived by government under certain situations. The purpose of the fifty percent fee is to compensate the county for the failure of the landowner to fulfill his obligation, (Sec. 51283) as well as to provide a deterrent to the landowner to seek cancellation during the early years of the contract.

Where part of the land under contract is taken by eminent domain, the contract is canceled as to the portion actually condemned. As to the remainder of the land, the contract remains in force (Sec. 51295). The issue of whether the same result would follow if the taking by eminent domain rendered the remaining land impractical for agricultural use has not been resolved. The Act seeks to assure that the owner of land under contract and being condemned will not be at a disadvantage in the valuation process.

To defray the cost of administering the program, each county is entitled to \$1.00 for each acre under contract. (Sec. 51260) Unless waived, the landowner is entitled to \$0.05 for each dollar of assessed valuation of land under contract (Sec. 51261). The landowner may may waive such payment. Local government may require waiver up to the amount of the assessed valuation at the time the contract is executed. But it may not require a waiver of a greater amount as a condition of executing the contract.

## AGREEMENTS

Counties are not limited to the use of contracts. Article 3.5 of the Act provides for the offering of agreements. Agreements may be more flexible than contracts. This versatility was built in to allow local governments to mold their programs to meet unique local needs.

The most important issues regarding agreements concern the assessment of land under them. These issues will be discussed in the following sections.

## 1966 WILLIAMSON AMENDMENTS TO ASSEMBLY BILL 80<sup>9</sup>

### Section 402.1 Revenue and Taxation Code

Section 402.1 was really a wholesale revision of the old 402.5 and 402.6 which were repealed. Like the Williamson Act, it preceded Article XXVIII. It bound the assessor to consider "enforceable restrictions" on the use of the land. It included, but did not limit enforceable restrictions to, zoning or any recorded contract with government which limits the use of the land. It did not merely apply to agriculture, but to all types of land use restrictions on all land. In other words, any enforceable restriction must be considered.

<sup>9</sup> 1966 *Williamson Amendments to Assembly Bill 80*

Bill Number: A.B. 80, 1966 1st Ex. Session

Author: Hon. John Knox, Hon. Nicholas Petris, et al

Enacted: 1966

Amended by: A.B. 2011 (only 1815 Sections) Hon. John Veneman, Knox, Pattee, Quimby, Z'berg, Senators Lagomarsino, Coombs and Way, 1967 Regular Session

Section 402.1 incorporated the rebuttable presumption from 402.5 and 402.6, changing "foreseeable future" to "predictable future." Among the grounds specifically available to the assessor for rebutting the presumption are (1) "past history of like use restriction in the jurisdiction in question, and (2) the similarity of sales prices for restricted and unrestricted land."

Unless the landowner has no opportunity to renew or extend the restriction, the possibility that the restriction will be removed at a definite time is not conclusive proof of its imminent removal.

Where the presumption of permanence stands unrebutted, the assessor is foreclosed from considering sales of land not similarly restricted as comparable in assessing restricted land.

Where he has rebutted the presumption "the assessor may consider . . . (inter alia) representative sales of comparable land not under restriction but upon which natural limitations have . . . the same effect as (the) restriction" and where the restriction still has some future life and some effect on market value. This latter provision is directed specifically at expiring Williamson Act contracts and agreements. Such contracts and agreements are no longer valued under Section 423 (discussed below) and therefore fall under 402.1.

As may have been inferred from the second paragraph of this discussion, 402.1 really created two rebuttable presumptions. The first presumption is that the restriction will have the effect of equating the value of the property to the value attributable to the legally permissible use. Failure of this equation will be demonstrated by comparable sales. Once the assessor has rebutted this presumption by reference to similar sales prices of restricted versus unrestricted land in the area, the restriction may be disregarded. The second presumption is that the restriction will not be removed or modified. The assessor may rebut this presumption by showing that a pattern of rezoning has characterized the area and that historically, similar zoning restrictions have been perforated by variances, special use permits and miscellaneous exceptions.

## SECTION 1630

To insulate the landowner from remaining inequities of the latter presumption in the rebuttal contest, Section 1630 of the Revenue and Taxation Code was made part of A.B. 80. It was the landowner's second line of defense in case the 402.1 presumption of no-zoning change was under attack.

Section 1630 said that where a taxpayer's land is subject to a restriction placed on it by local government, notably by zoning or Land Conservation Act contract or agreement, he may ask the local governing body for a statement of its intent not to terminate that restriction. If the body does give him a letter of their intent not to remove the restriction, then the taxpayer may submit it to the assessor and may use it in an action to appeal his assessment.

The main purpose of 1630 was to give the landowner a means of placing in evidence before the county board of equalization in an assessment appeals procedure the future intention of his governing body with respect to his land. Prior to A.B. 80 and A.C.A. 10, 1966,

now Article 13, Section 9.5 of the Constitution, this had not been necessary, except in the case of contracts and agreements executed by a city, since the supervisors who did the zoning (i.e., any restricting of use) were the same individuals who participated in the appeals process. Now, however, the appellate body may not be composed of the same men. This facet of 1630 will have its strongest impact in two contexts: (1) If the county has appointed an assessment appeals board pursuant to A.C.A. 10 (1966), or (2) if the restriction in question was done by a city rather than a county governing body.

The 1630 letter is to provide the landowner with evidence, admissible in an assessment appeal proceeding, that although there exists a general pattern of rezoning in the area, as to the particular property in question, the restriction will not be removed within the predictable future. In this context, the 1630 letter, by its terms, sets up a third rebuttable presumption. The assessor must now overcome three presumptions:

1. The presumption that the restriction will be reflected in sales price.
2. The presumption that the generic restriction in question has a tradition of stability in the jurisdiction and will not be removed.
3. The presumption that the declaration of the governing body that the particular restriction on the land in question will not be removed belies the general pattern of rezoning and removal of restrictions.

Shouldering this burden compels the assessor to proffer evidence that the restriction has scant prospect of permanence despite the declaration of the zoning body to the contrary. Since such proof would necessarily cast doubt on the fidelity if not the veracity of the governing body, it is doubtful that the assessor could prevail in the absence of some cavalier disregard of past letters of intent by local government.

Therein lies another latent purpose of 1630. One explanation for the past weakness of zoning is found in the constitutional inability of one board of supervisors to bind its successors. It was thought that by placing one board on record, successor boards would be reluctant to deviate from that position. Capricious or unwarranted failure to honor the commitment of the prior board would undermine the integrity of present and future letters of intent. Political pressure of landowners would thereby augment the inertia of existing policy to stabilize zoning and other restrictions. As a corollary, when a landowner requests a letter of intent not to remove the restriction, it is easier for the governing body to refuse his subsequent request for removal.

It is unclear whether a letter of intent can be used in years succeeding its issuance. While the section itself is silent on the question of the usable life of the letter, logic would give it viability until the assessor either overcame the presumption created by it, or disregarded it so as to again put the valuation issue before the local board of equalization.

As a practical matter, Section 1630 was of little moment. Letters of intent were issued, but the purposes of the code section were not greatly advanced by them. The effect of 1630 prior to A.B. 2011 was negligible and has since dwindled.

## SECTIONS 1815.6, 1815.7, 1815.8 AND 1815.9

These sections were originally part of the "Williamson Amendments" to A.B. 80, which predated Proposition Three. It is for that reason that they are discussed here. They were, however, amended by A.B. 2011 which followed Proposition Three. In the interests of clarity and simplicity, the following discussion will deal with the sections in their post-Proposition Three amended form. In trying to follow the statutory evolution of California's open space law, these sections should be considered as falling chronologically into the pre-Proposition Three continuum.

An understanding of these esoteric code sections calls for some background knowledge of the function and practices of the State Board of Equalization. The following discussion is intended to outline quite roughly the matrix within which the statutes fit.

*The Role of the Board versus the Roll of the Assessor*

As its title would imply, one function of the State Board is to equalize assessments. Equalization seeks three goals which are of concern here. The first is to insure that common property which is assessed by the local assessor is assessed on the same basis<sup>10</sup> as public utility property which is assessed by the State Board. The second is to promote equal treatment in the assessment process of comparable property similarly situated throughout the State. The third is to guarantee that state subvention payments to each county are based upon an equal effort to raise its share of revenues needed to operate such facilities as schools.

## INTERCOUNTY EQUALIZATION

California's total property tax revenue for fiscal 1967-68 was \$4,125,000,000, representing a gross increase of \$364,000,000 over the year before. This dynamic increase affirms the need for an even handed administration of the property tax. Article XIII Section 9 of the California Constitution was adopted to insure this needed uniformity. It requires the State Board to maintain a common ratio of market to assessed value in each county. To maintain this relationship, the Board must determine the statewide average ratio which is then used as the standard for individual counties.

## TRIENNIAL SURVEY

One third of California's counties are surveyed each year. The Division of Inter-county Equalization, or D.I.E., conducts a survey to determine the market value of all common properties within the county as of the previous lien date. In order to make that determination, the following procedure is followed. The D.I.E. looks at the local assessor's roll. The roll is broken down into graduated strata according to value. From each value stratum the D.I.E. extracts a statistically relevant sample.

Properties which appear in the sample are then valued. From the assessment of sampled properties, an average is computed. The average is expanded to represent the full cash value of all property in the

<sup>10</sup> The word basis is intentionally vague to avoid a discussion of method, standard and ratio assessment parity.



county. The full cash value of all property in the county is compared with the assessed value of all property as set by the local assessor. The resulting figure is called the county ratio.

From an amalgamation of each county ratio, the Board also computes a statewide average. The Board compares the ratio of market to assessed value for the sampled county with the statewide average. If the assessor's ratio is within a reasonable number (set by the Board) of percentage points of the statewide average, then he is considered to be within the "tolerance zone". If, however, the local assessor's figures are not within the tolerance zone, the State Board may issue an order to the county auditor to raise or lower, on a pro rata basis, all property on the local assessment roll.

It should be noted parenthetically that when an order changing the assessed valuation is issued, the tax rate is changed proportionately so that the same amount of revenue is derived from the entire adjusted roll as would have been realized had the change order not been issued.

The effect of the Board's sample can only have an indirect effect on any particular assessment made by the local assessor. The Board may not change any given assessment on the local assessment roll. Disagreements between the local assessor and the D.I.E. may be reviewed by the Office of Appraisal Appeals of the State Board, and ultimately by the Board itself. The indirectness of the Board's impact does not diminish its significance. For political reasons, growing largely out of public ignorance of this complex scheme, the assessor wants to avoid any change order which would raise or lower his assessed valuation.

### SCHOOL FINANCE AND ASSESSMENT

In addition to the possible adjustment of the entire local roll, the Board's ratio is utilized in the school aid apportionment process. The amount of State aid to school districts is based upon the assessed valuation of the district per unit of average daily attendance. To assess the property in one county at a lower proportion of market value than property in a second county will result in a larger payment from the State to all qualified districts within the first county. To prevent such a disparity in payments from the State, the Board compares the assessment ratio in each county with that of the statewide average. The result of this equation is known as the "Collier factor".

The "Collier factor" is applied to the assessed valuation of each district within a county in determining the amount of State aid. This may result in a given district receiving more or less State aid than it would have had in the absence of the "Collier factor". The concomitant adjustment of aid payments is designed to balance the relationship between State aid and local ability to pay.

When the Collier factor exceeds 1.00, the county is required to levy a special countywide tax and distribute the revenues therefrom to the school districts entitled to equalization aid. The amount of this tax is the difference between the state school aid for which the county's school districts are actually eligible and the amount for which they would have been eligible had locally assessed values not been adjusted by application of the Collier factor. The total amount of revenue to be raised by this special tax is certified by the county superintendent of schools to



the county board of supervisors, which then levies the requisite tax rate.

It is worth noting that the assessor's roll may fall within the tolerance zone mentioned above, and still cause a special school tax to be levied. If it was not pellucid before, it should be made clear now that while the supplemental countywide tax is a *separate* tax, it is *not* an *additional* tax in the sense that it will result in an increase in the aggregate school revenue produced in the county. Its effect is merely to increase the total revenue raised in the county for school purposes to the level it would have been had the assessment ratio in the county been at the statewide average in the beginning.

Despite the fact that the special school tax arising from a high Collier factor is not an additional tax, the assessor would rather avoid it. Only by raising the assessment of common properties (those assessed locally) can it be avoided. To do so results in raising the percentage of the total tax bill which is paid by common properties and lowering the total tax bill of public utility properties. Conversely, to the extent that the loss due to a lower tax upon locally assessed property is replaced by a special tax upon the entire roll, including utility property, a high Collier factor means that common properties will pay a lower percentage of local taxes in relation to State assessed properties. Nevertheless, only in the most sophisticated jurisdictions could an assessor afford such a gambit.

In practice, pragmatic assessors seek ratios sufficiently high to avoid both change orders raising assessed values and supplemental taxes resulting from a high Collier factor. To do so, the assessor must have a ratio close to that of the statewide average. This means that his assessments must be made with an eye to what the D.I.E. will do in its sampling. The constant threat of an adverse ratio tends to bring the methods of the local assessor into conformity with those used by the State Board.

By restricting the methods of the State Board, the assessment procedures of local assessors will inevitably be altered. One purpose of the 1815 sections was to free local assessors to use certain assessment techniques by imposing them upon State Board in its sampling procedure.

#### **Section 1815.6**

Section 1815.6 defined "comparable lands" and "representative sales information" for purposes of Sections 402.1, 1815.7 and 1815.8.

#### **Section 1815.7**

Section 1815.7 gave detailed directions to the State Board while making appraisals conducted in the intercounty sampling process.

It may be especially helpful to consider this section in its historical context. *Wild Goose Country Club v. Butte County* (1922) 60 Cal. App. 339; 212 P. 711, had said that in valuing land the assessor must consider all possible uses to which it was naturally adapted. *De Luz Homes v. County of San Diego* (1955) 45 Cal. 2d 613, 290 P. 2d 544, had said that in the absence of an "actual market" for the valued land, the assessor must devise an "hypothetical market price" for the land. Section 402.5 (Revenue and Taxation Code) had directed the assessor,

when considering uses to which the land is *naturally adapted*, to confine himself to those uses to which it is also *legally adapted*.

Section 1815.7 tied each of these factors together. In effect, 1815.7 (parts (a) and (b)) told the Board when an "actual market" is present. *De Luz Homes* had said that in "the absence of an actual market . . . the assessor must then use such pertinent factors as replacement costs and *income analysis* for determining valuation". 290 P. 2d 544 at 555, citing *Kaiser Co. v. Reid*, 30 Cal. 2d 610, 623, 184 P. 2d 879, 887. 1815.7 part (c) gave direction to the Board in its use of "*income analysis*" where income is capitalized to arrive at the "hypothetical market price" spoken of in *De Luz Homes*.

In the interests of simplicity, 1815.7 will be deemed to consist of two parts. Each of these parts deals with a distinct valuation procedure. The first portion of the section deals with valuation through the use of representative sales. It tells the Board what is needed to utilize this technique, and what to do when legally permissible sales information has been found. The second part tells the Board how *NOT* to value land when such representative sales data is lacking.

Under the first alternative, the Board may use comparable sales data in valuing land only if the comparable land meets the tests for comparability found in 402.1, 1815.6 and 1815.7. In any case, the Board may not use comparable sales unless there are five sales of land, each of which qualifies as comparable under the above sections. A lesser number of sales may be considered only if two or more of the sold parcels are contiguous to the land being valued.

### COMPARABILITY

Sections 402.1, 1815.6 and 1815.7 set forth four distinct tests for comparability. Save rare exceptions, each test must be met if any sale is to be used in valuing sample property. They are:

1. Uses legally permitted are similar
2. Actual uses are similar
3. Physical characteristics are similar
4. Close proximity to valued land

When apparently representative sales information is available, the Board must go behind each of the sales being used and consider three additional factors:

1. The possibility of unique tax influences on the sales price.
2. Peculiar conditions surrounding the sale which render it inaccurate as an index of the worth of the land being valued.
3. The method of financing the sale, and its impact on price.

### ALTERNATIVE VALUATION

The second part of 1815.7 delineates the method of assessment where the five sale requirement has not been met and income is used to fix present value. The section does not compel the Board to use an income approach. If, however, income is capitalized to set value, certain requirements must be met.

The capitalization rate must be predicated on "a rate of return which is based on allowances for risk, interest and property taxes, which shall not be derived from sales data from other lands."

Were it not for this section, sales data would probably be used as follows:

The appraiser would say:

1. The following formula for capitalizing income is:

$$\left. \begin{array}{l} \text{Rate of return} \\ \text{or} \\ \text{Capitalization rate} \end{array} \right\} = \text{income} : \text{value}$$

2. Similar land rents (@ \$30.00 per acre.
3. Similar land, which does not legally qualify for use as representative sales information, sells on the market for \$1,000.00 per acre.
4. Therefore purchasers of similar property accept an anticipated 3% return on their investment.

Continuing the hypothetical by turning to subject land:

5. Subject land yields \$30.00 per acre as income.
6. Prospective purchasers of subject land would predictably accept a 3% return on their investment.
7. Therefore, 3% is an appropriate capitalization rate to apply to income in order to compute the present value of subject property.
8. The application of the 3% capitalization rate to \$30.00 income yields a value of \$1,000.00—thus

$$30 \div .03 = 1000$$

By the use of such logic, an appraiser could thus "back into" a value for property derived from a source which he is foreclosed from using directly.

#### ATTORNEY GENERAL'S OPINION

In November of 1968 the Attorney General issued an opinion construing two facets of Section 1815.7. (See Opinion No. 68/137—published as Appendix B of this report).

In his opinion the Attorney General addressed himself to the question whether the method of valuation of property can be so circumscribed by the Legislature as to alter the constitutionally required full cash value standard.

It was the opinion of the Attorney General that subdivisions (b) and (c) of Section 1815.7 have the effect of preventing the State Board of Equalization from arriving at the fair market value of property in an intercounty equalization sample. (68/137 p.8) He concluded that these subsections "are, accordingly, violative of the true value requirement of Article XIII, Section 9, of the Constitution when applied to non-open space lands." (68/137, p.4).

The opinion is significant in two respects. First, it means that in the case of non-open space lands the Legislature may not overly restrict the Board, nor, presumably, local assessors, in their use of sales data as an indicator of value. It may not, in other words, so confine the method of assessment as to alter the standard of assessment. Second, it means that the Legislature may not restrict the Board to one valuation procedure while leaving local assessors free to follow another when to do so would cause the Board to value land at a standard which is different from

that used by the local assessor. To do so, in the opinion of the Attorney General, would be to thwart the objective of equalization compelled by the Constitution.

It should be observed that the opinion did not cast the shadow of unconstitutionality over all of the provisions of Section 1815.7. The full importance of the opinion is not clear. The question of how far the Legislature may go in limiting the use of sales data awaits judicial determination.

It should also be noted that Section 1815.7 and the opinion construing it deal only with non-open space land. They do not relate to the assessment of land which is restricted pursuant to Article XXVIII.

#### SECTION 1815.8—LAND SUBJECT TO RESTRICTION

Section 1815.8 applied the same restrictions imposed on local assessors by 402.1 to the Board of Equalization. The Board is now bound by the same requirements in testing the assessor's valuation as bound the assessor in the first instance.

Like the other 1815 sections, 1815.8 was drafted to alleviate the dilemma posed by 402.1 and the State Board's sampling process. Section 402.1 had told assessors to look only at factors relative to actual use in valuing restricted land. The State Board was free to use any method of valuation unfettered by the shackles which had tied the assessor in his valuation. Section 1815.8 bound the Board to follow the same methods in reviewing the work of local assessors which were used in the original assessment.

#### SECTION 1815.9—USE OF SALES AFTER LIEN DATE

Section 1815.9 barred the Board from considering property sales which occurred after the lien date of the roll currently being sampled.

Without 1815.9, the assessor may have assessed a given parcel under the income stream analysis because there were not sufficient additional sales to accurately set a value. If sufficient additional sales occurred between the time of the local assessment and the time of the sample taken by the D.I.E., then the D.I.E. could legally use sales where their use had been denied the assessor. The value set by the D.I.E. may have been different from that found by the local assessor as a result of the intervening sales and the use of a different method of valuation. To prevent dual assessments on double standards, possible because of the interstitial time lag, 1815.9 was adopted.

#### 1966 PROPOSITION THREE, ARTICLE XXVIII OF THE CALIFORNIA CONSTITUTION <sup>11</sup>

Article XXVIII, commonly referred to as Proposition Three, (from its position on the 1966 ballot) authorized the Legislature to establish assessment formulae for land subject to an enforceable restriction.

The objective was the preservation of open space land by way of use-related assessment policies.

<sup>11</sup> 1966 *Proposition Three, Article XXVIII of the California Constitution*  
 Bill Number: S.C.A. 4, 1966 1st Ex. Session  
 Author: Senator Fred S. Farr, Hon. John Knox  
 Passed: 1966 Legislature and Nov. election 1966  
 Enacted: 1966



It was pursuant to the authorization in Article XXVIII that Sections 421-425 Revenue and Taxation Code were adopted in Assembly Bill 2011.

The significance of Article XXVIII is that it is now constitutional to assess certain land on some basis other than "full cash value". The "full cash value" standard discussed above was not directly repealed by Article XXVIII. The Legislature was merely permitted to supersede it by statute when dealing with open space land, "notwithstanding any other provisions of the Constitution". Article XXVIII is therefore not self-executing.

What the Land Conservation Act did by indirection may now be accomplished directly. As noted above, the Williamson Act was designed to have an effect on the full cash value of the land by restricting its use. This market effect was necessary because prior to Proposition Three, cash value was the constitutional standard of assessment. Such is no longer the case.

Article XXVIII provides for an assessment which the Legislature determines to be "consistent with the restriction and use". The Legislature is free to devise any *method* which will achieve this flexible *standard*.

Under Article XXVIII, the Legislature has the duty of (1) defining open space land, (2) "specifying" what constitutes an enforceable restriction, and (3) determining a method of assessment which is consonant with open space restriction and use. It should be made clear that the effect of the restriction on market value may now be declared irrelevant.

Recommending solutions to these problems is the task of the Joint Committee on Open Space Lands.

#### 1967 ARTICLE 1.5 SECTIONS 421 TO 425 REVENUE AND TAXATION CODE ASSEMBLY BILL 2011<sup>12</sup>

Sections 421-5 were a stop gap measure to fill the hiatus between Article XXVIII and any legislation adopted pursuant to the report of the Joint Committee on Open Space Lands.

It is imperative that Sections 421-5 be considered in light of Article XXVIII. They are post-Proposition Three code sections and are therefore unlike any previous code sections discussed herein.

In Section 421, "open space land" was provisionally defined as (1) land in an agricultural preserve or (2) land under a scenic easement deed.

For purposes of Article XXVIII, Section 422 defined two forms of "enforceable restriction". The first is a Land Conservation Act Contract. The second is a scenic easement deed or Land Conservation Act Agreement where the deed or agreement contains restrictions which are "substantially similar or more restrictive than those required by statute for a contract". The Land Conservation Act contract is, in other words,

<sup>12</sup> Article 1.5 Sections 421 to 425 Revenue and Taxation Code  
Assembly Bill 2011

Bill Number: A.B. 2011, 1967 Regular Session

Authors: Hon. John Veneman, Knox, Pattee, Quimby, Z'berg, Senators Lagomarsino, Coombs and Way

Enacted: 1967



the standard which must be met by both scenic easement deeds and agreements via the substantially similar test.

The language just quoted is crucial to any understanding of the code section. While land under contract must be assessed according to Section 423, land under an agreement which is not as restrictive as a contract may be left without such favored treatment, in which case it would have to fall back upon the treatment given by the assessor under Section 402.1.

How does one determine substantial similarity? It is a conundrum not easily soluble. The effect of the agreement on market value does not enter into the assessment under Section 423. Neither, presumably, does the fact that some of the terms of the Agreement are different from those of a Contract. What is important is whether the agreement or scenic easement, taken as a whole, contains restrictions which are qualitatively similar or more restrictive than those of a contract.

For example, an agreement which contains a unilateral cancellation clause, (not permitted in a contract), without some other offsetting condition, would undoubtedly be disqualified as not being substantially similar or more restrictive. However, an agreement with such a provision might be made to meet the test if the penalty for cancellation approximated the value of the land. Such a severe penalty would be necessary since there would be no other guarantee that the terms of the agreement would bind the land.

One reason for permitting the use of agreements meeting such a similarity test was, as noted previously, to encourage local governments to innovate. It was hoped that (1) local governments would construct programs tailored to their unique local needs, and (2) this "grass roots" implementation would disclose problems and solutions not contemplated by the Legislature.

Pro forma similarity was not therefore the test. Presumably, regardless of how sharp the difference between the contract and agreement forms, the test is whether the effect of the agreement is to restrict the land (1) to certain uses, (2) for a length of time sufficient to guarantee the public that the benefit approximates the cost.

## SURVEY OF OPEN SPACE LEGISLATION IN CALIFORNIA

### 1. 1957—Section 402.5 Revenue and Taxation Code

Where land is zoned and used for exclusively agricultural, airport or recreation purposes, and there exists no reasonable probability that the zoning restriction will be removed in the near future, the assessor may only consider factors relative to the use of the land. Repealed in 1966.

### 2. 1965—Amended 402.5 and Added 402.6 Revenue and Taxation Code

402.5: Amendment established a rebuttable presumption that the zoning restriction was permanent. The burden of overcoming the presumption was thereby shifted to the assessor.

402.6: Where land is subject to a Land Conservation Act Contract or Agreement, it must be assessed on the basis of its restricted use, but not in violation of the constitutional provision for taxation in proportion to value.

3. 1959—Sections 6950 to 6954 Government Code (*Scenic Easement Deed Act*)

Allowed local governments to acquire the developmental rights to real property.

4. 1962—*Proposition Four*

A defeated constitutional amendment which would have created a tax deferral program for agricultural land.

5. 1965—Section 51200 et. seq. Government Code, *California Land Conservation Act (Williamson Act)*

This Act allowed local governments to contract with land owners within their jurisdictions to restrict the use of undeveloped land to agriculture or uses compatible with agriculture. It set up a "contract" program for "prime land" and an "agreement" program for either prime or non-prime land.

6. 1966—*Williamson Amendments to A.B. 80*

*Section 402.1* revised 402.5 and 402.6 Revenue and Taxation Code, which were concurrently repealed.\* It was not tied to agricultural land, but bound the assessor to consider ANY "enforceable restriction" on the use of ANY land. Such a restriction was rebuttably presumed to be permanent. *Section 1630* Revenue and Taxation Code allowed the land owner to secure a "letter of intent" from his local government indicating an intention not to remove a restriction. The letter set up a presumption of permanence as to the particular land and restriction in question, primarily for purposes of an assessment appeals proceeding. Sections 1815.6, 1815.7, 1815.8 and 1815.9 Revenue and Taxation Code outlined the procedure to be followed by the State Board of Equalization in making sample land appraisals for purposes of intercounty equalization.

7. 1966—*Proposition Three, Article XXVIII of the California Constitution*

Article XXVIII authorized the Legislature to define open space land and "enforceable restriction". It enabled the Legislature to devise a method of assessing open space land which is subject to an enforceable use restriction on a basis other than full cash value.

8. 1967—*Assembly Bill 2011, Section 421–425 Revenue and Taxation Code*

A.B. 2011 provisionally implemented Proposition Three. It defined "open space land" as (1) land in an agricultural preserve, (2) land subject to a scenic easement deed. It defined "enforceable restriction" as (1) a Land Conservation Act Contract, (2) a Land Conservation Act Agreement which is as restrictive as a Contract, and (3) a scenic easement deed which is as restrictive as a Contract. It provided that in assessing qualified land, both the local assessor and the Board of Equalization are bound to consider only factors relative to the permitted use of the land and are forbidden to use sales information.

\* Secs. 402.5 and 402.6 were superseded by 402.1.

## CHAPTER FOUR

# SURVEY OF CALIFORNIA COUNTIES RELATIVE TO CALIFORNIA LAND CONSERVATION ACT OF 1965 (WILLIAMSON ACT) 1968-69

## INTRODUCTION

The California Land Conservation Act was adopted in 1965. But it was not until the approval of Proposition Three and the enactment of A.B. 2011 in 1967 that land began to go under the Act in large quantities. Indeed, the past assessment year saw fully 10 times as much land added to the program as had been included in the previous two years combined.

One of the principal tasks of the Committee has been to look at this Act and the way it has been used by local governments. To do so, the Committee conducted a survey of California's 58 counties. This summary is intended to reveal the findings of that survey.

The difficulties inherent in such a study are clear. The experience of local governments in dealing with the Act is brief. As a result the available information is sketchy and quickly outdated. Any conclusions which might be drawn from this study must necessarily be tentative.

In addition to the difficulty of using this early information to project long-range trends and conclusions, numerous factors which do not appear in the survey itself limit its utility in drawing general conclusions.

The results of the survey reveal, for example, that over two million acres of land have been placed under the Act. It does not reveal, however, that for more than 90% of this land 1968-69 was the first year in which it was restricted. Nor does it disclose that in the same year 17 of the 23 participating counties were executing contracts and agreements for the first time. To more accurately evaluate the findings of this survey it may be worthwhile to place some of the more relevant policy issues in this sort of perspective.

## PURPOSE OF THE PROGRAM: TO PRESERVE PRIME LAND, TO CONTAIN URBAN SPRAWL

The California Land Conservation Act is available to any land which local government considers to be commercial agricultural land. It is clear however, that the Legislature had two rather clear objectives in mind in passing the Act.

While the Legislature made the provisions of the act available to all farm land, it assigned the highest priority to the conservation of "prime" agricultural land. The Legislature also expressed its intent to preserve agricultural land which is located in the periphery of urban areas. Continuation of the Act will ultimately depend upon public support. The public will, in all probability, evaluate the program in terms of the cooperation which agricultural landowners offer in meeting the

two objectives spelled out in the Act. If farmers in urban fringe areas are unwilling to avoid the burdens which flow from land speculation by giving up the right to speculate on their own land, public support for such voluntary conservation programs will be short lived.

### PRIME LAND

The survey reveals that only 131,273 acres of prime land have come under the Act. This constitutes less than 4% of the prime land in those counties which have made use of the Act. In addition this comprises less than 2% of the prime land in the state and makes up only about 6.3% of the land presently under the Act.

### URBAN FRINGE LAND

Of the more than two million acres now under the Act, only 19,676 acres or less than 1% are situated within one mile of an incorporated area, 359,317 acres are between 3 and 10 miles distant, and 1,618,230 acres—almost 80%—are more than 10 miles from the nearest city.

### GOVERNMENT AND LANDOWNER

From these statistics it is obvious that the twin goals of the Act have not yet been fulfilled. It would also appear that the emerging trend is not in the direction of either preserving prime land or containing the discontinuous growth of cities. Time may serve to confirm these early observations. To accurately appraise this pattern, however, one must examine its source from the vantage point of both local government and the landowners.

### LOCAL GOVERNMENT

#### 1. *Planning*

One factor which has militated against the use of the Act in urban fringe areas is the unwillingness of local government to relinquish planning flexibility in expanding urban areas. In many of these areas it is difficult to project the need for urban expansion 10 years in advance. For this reason local governments are reluctant to bind themselves by executing contracts or agreements in transitional areas.

#### 2. *Tax Base*

The second factor which contributes to the reluctance of local government to restrict the use of rural-urban fringe land is the fear of eroding the local tax base. While this fear is of questionable validity, it is frequently given as a reason not to offer contracts and agreements on valuable land.

As a corollary to this factor, many local governments are reluctant to discourage any urban development which could expand the local tax base.

#### 3. *One Mile Provision*

As the Act is now written, cities have the power to protest the establishment of a preserve on land within one mile of their boundaries. If such a protest is made, the city may invalidate the restriction when it later annexes the land.



There is some evidence that cities are filing protests in every instance in order to keep their option to terminate the restriction open.

In order to avoid a premature removal of the restriction by annexation, counties are declining to execute contracts or agreements where a city protest has been filed.

### THE LANDOWNER

Remote land is in most critical need of the tax protection which the program affords. The reason for this is that this land is generally less productive. The disparity between market and income assessment is greater on this land than on higher quality land. Because of this it is in these areas that the effect of land speculation is most disastrous for the non-speculating landowner. This is the major cause of the disproportionate amount of low quality and remote land which has come under the Act.

It is also true that the owners of land in urbanizing areas have less to gain from the Act and less to lose without it. There are two reasons for this. First, the opportunity to profit from urban development is more imminent in these transitional areas. Second, while the taxes resulting from market value assessment are much greater on this land than is the case of more remote land, the fringe land is usually of a higher quality and hence productive of greater income. The reason for this is simply that many of our cities have been built upon prime land.

As a result of these factors, fringe area landowners are better able to pay property taxes and are less willing to tie up the use of their land for protracted periods into the future.

One could correctly conclude from this that the same set of circumstances which contribute to the limited use of the Act around cities also affects the amount of prime land which is restricted. Stated differently, it is coincidental that large amounts of prime land are situated around cities. It is likewise coincidental that both local governments and landowners are more likely to profit from urban development around cities; only the public stands to lose.

### GENESIS OF THE ACT

The Land Conservation Act was enacted in response to two fundamentally dissimilar problems. One of these was the need of farmers to have their land assessed on the basis of its economic worth—i.e. its ability to generate income from farming. The second of these was the need for some means to regulate and guide urban development. The Legislature hoped to preserve prime land by containing urban growth. It sought to achieve these objectives by offering the owners of qualified land use-related assessment. This synthesis of overlapping policies formed the nucleus of the program.

While the results of the Committee's survey do not indicate that these policies are meeting with immediate success, it would be premature to prejudge the long range impact of the Act. Urban development beyond a radius of 3 miles is not at all uncommon. In fact, this sort of scattered development furnishes the classic example of leap frog development which initially spawned the Act. It seems certain that within the 3-10 mile range lie the transitional lands of 10-20 years hence.



In view of this, the 359,317 acres lying within these bands around our cities assume considerable significance. This significance is not diminished by the fact that in order to convert the use of restricted land within the next 15 years, the landowner must make the decision to begin the termination period within the next 5 years.

The survey showed, on this issue, that even though some land has been under the Act for as much as 3 years, there have been only two notices of nonrenewal served by landowners. Equally important is the finding that 22 of the 23 participating counties require their planning staff to review preserve applications, and 13 require planning commission review. 16 of these counties establish preserves in accordance with their general plan.

To understand the Land Conservation Act and this survey, one should bear in mind that the Act began as an amalgamation of many diverse and independent policies. But while these problems co-exist independently, they are strung on a single thread. The forces which exacerbate one also irritate the others. In order to evaluate the data contained in this survey, the interdependence of these factors must not be overlooked.

The future of the Land Conservation Act will probably not be secure until the owners of prime and urban fringe land demonstrate a commitment to doing business *on* their land rather than *with* it. But an accurate evaluation of the Act in these terms is not possible from current data. In view of the tentative and at times conflicting findings which have appeared from this survey, it would appear premature to pass judgment upon the ultimate ability of the Act to fulfill its stated objectives. At the same time, it can safely be assumed that no voluntary program of this sort is likely to meet all of the objectives of a comprehensive land-use program.

### LAND CONSERVATION ACT SURVEY

This Committee, with the cooperation of the County Supervisors Association of California, sent a questionnaire to each of the 58 counties in California. Information was requested relative to experience in implementing or considering the implementation of the California Land Conservation Act of 1965 (Williamson Act).

Early responses indicated that some counties which had not given serious consideration to utilizing the Williamson Act would probably not respond, even though the questionnaire sought to obtain information of general nature.

The Committee then prepared a short follow-up questionnaire including only questions of general application and not related directly to the Act. This follow-up was sent to those counties which returned the first questionnaire unanswered, or nearly so. By October 8, the Committee had yet to receive responses to either the initial questionnaire or the follow-up from seventeen counties.

By November all but five of the 58 counties had responded either to the original questionnaire or to the follow-up. The only counties which did not do so were Los Angeles, Mariposa, Plumas, Sierra and Yuba. Mariposa County and Yuba County sent letters which indicated that they did not intend to reply further.

To facilitate reporting and analyzing the results, this summary will be divided into four parts. Part One will deal with those questions applicable primarily to those counties which had executed contracts or agreements by March 4, 1968. Part Two will deal with those questions which apply to all counties. Part Three will include those questions which apply mainly to those counties which had not executed contracts or agreements, but which had taken action of some kind relating to the program. Part Four will examine the effects of agreements upon school districts.

## PART I

### *Contracts and Agreements Executed*

By March 4, 1968, 23 counties had executed 1,677 contracts and agreements covering 2,061,968 acres. (Table I) Of this land, 131,273 acres was reported to be prime agricultural land as defined by the Act. (Table II)

### *Preserve Requests*

These 23 counties had received 1,867 requests to establish preserves on 1,478,301 acres. They later established 1,068 preserves on 6,482,583 acres. In most counties requests came from individual owners and involved only the land owned by the person making the request. In one county a request was submitted by a farm organization on behalf of its members.

### *Contracts Executed*

Only two counties, Fresno and Kern, offered contracts as authorized by the Act for prime agricultural land. All other counties offered only agreements, regardless of the quality of the land.

Fresno County had one 1967 contract. This contract, as required by the Act, included provisions for offset payments by the county to the landowner in the event the assessed valuation on the property should be increased. The State is obligated by law to pay the County \$1.00 per acre on July 1st of each year for land under this contract.

Fresno County signed six new contracts that became effective on the 1968 lien date, covering 1,638 acres. These new contracts were executed by the county and were properly recorded but were approved by the Director of Agriculture subject to the condition that payments would be made by the State to the County only if money were available for that purpose.

Kern County signed 72 contracts on 38,110 acres. These contracts included a clause whereby the landowners waived the entire amount of any payment that might become due them from the county. The contracts were executed by the landowners and the county but at a later date were forwarded to the Director of Agriculture for approval without having been recorded. The Director at first agreed to approve these contracts subject to the removal of the waiver clause agreed to by the landowners, and with the provision that the contracts should include a clause relieving the State of responsibility for making the \$1 per acre payment unless money is appropriated for that purpose. Later the Director unconditionally withdrew his offer to approve the con-

TABLE I  
COUNTIES WITH LAND SUBJECT TO CONTRACT OR AGREEMENT PURSUANT TO CALIFORNIA LAND CONSERVATION ACT OF 1965  
(WILLIAMSON ACT) 1968-69

	Agricultural Preserves Requested		Preserves Formed		Contracts Approved		Contracts Approved not Approved		Agreements Prime		Agreements Non-Prime		Agreements Total		Mixed Prime		Non-Prime	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres
Alameda-----	13	25,892	11	24,202														
Butte-----	10	1,064,320	10	1,064,320														
Colavara-----	3	5,905	3	5,905														
El Dorado-----	95	107,679	60	94,365														
Fresno-----	138	200,000	130	147,680														
Kern-----	203	472,182	25	3,570,000														
Madera-----	35	134,684	54	134,684														
Marin-----	127	11,378	4	214,543														
Mendocino-----	10	11,738	4	7,739														
Monterey-----	110	250,000	81	182,162														
Placer-----	17	5,650	12	4,351														
Riverside-----	30	3,520	4	3,319														
San Benito-----	70	243,845	68	242,400														
San Bernardino-----	115	5,818	48	2,892														
San Mateo-----	134	32,500	134	32,500														
Santa Barbara-----	36	52,516	19	32,277														
Santa Clara-----	1	148,548	1	148,548														
Santa Cruz-----	56	8,000	7	1,750														
Solano-----	7	3,878	8	3,296														
Sonoma-----	285	76,594	115	76,594														
Tehama-----	29	46,000	23	46,000														
Tulare-----	153	92,957	153	92,957														
Tuolumne-----	99	49,538	98	49,499														
Total-----	1,867	1,478,301	1,068	6,482,583	e7	e2,084	472	438,110	158	27,940	845	1,323,636	595	670,197		63,138		607,059

a Request from Farm Bureau on behalf of members.

b Executed prior to June 30, 1968. Valid for 1968-69 assessment year per A.B. 1038, 1968 Regular Session.

c Includes six new contracts covering 1,633 acres approved by Director of Agriculture subject to condition that no state payments will be made to county unless money is available.

d Subject to litigation.

TABLE II  
**CONTRACTS AND AGREEMENTS EXECUTED PURSUANT TO CALIFORNIA LAND  
 CONSERVATION ACT OF 1965 (WILLIAMSON ACT)—1968-69**  
**23 Counties**

	Number	Prime Land Acres	Non-Prime Land Acres	Total Acres
Contracts (Prime Land)-----	*79	*40,194	----	*40,194
Agreements				
Prime Land-----	158	27,941	-----	27,941
Non-Prime Land-----	845	-----	1,323,636	1,323,636
Mixed (Prime and Non-Prime Land)-----	595	63,138	607,059	670,197
Total Contracts and Agreements-----	1,677	131,273	1,930,695	2,061,968

\* Includes 72 contracts on 38,110 acres not approved by Director of Agriculture but where approval is subject of litigation.

tracts. The Kern County landowners have filed a suit asking the court to require the county to make proper recordation of the contracts and to recognize them as valid for the 1968-69 assessment year. The suit also asks the court to require the Director of Agriculture to approve the contracts without any conditions. This suit is still pending.

#### *Agreements Executed—Quality of Land*

Of the agreements signed, 158 covered 27,941 acres of prime agricultural land. 845 agreements covered 1,323,636 acres of non-prime land. 595 agreements covered 670,196 acres of mixed prime and non-prime, of which the counties indicated that 63,138 acres were prime. In most cases the counties had not determined whether the land under agreements was prime or non-prime, inasmuch as both are eligible. For this reason there is no way of measuring the number of acres in excess of 63,138 that is prime.

Of those counties having signed contracts or agreements, two report that the land included is among the best land in the county. Fourteen state that it is about average for the county; while six described it as below average. One county did not respond.

#### *Percent of Agricultural Land Under Contract and Agreement*

The total land under contract or agreement equals 11.8% of the agricultural land of the 23 counties in which it is situated. The amount of prime land is 4% of the prime land of the counties in which it lies.

#### *Location of Land Under Contract and Agreement*

The land under contract and agreement is primarily located more than three miles from the boundaries of a city. (Table III) Only 19,676 acres is situated within one mile of a city; 24,967 acres lie between one and two miles, and 39,778 acres are between two and three miles. 359,317 acres are between three and ten miles, and 1,618,230 acres are over ten miles distant.

Of the 44,643 acres of land situated within two miles of a city, 18,532 acres (44%) are in Santa Clara County. 10,302 acres (24%) are in Marin County. (Table III)



TABLE III  
PROXIMITY TO INCORPORATED AREAS OF LAND UNDER CONTRACT  
OR AGREEMENT BY COUNTY—1968

	0-1 Miles (Acres)	1-2 Miles (Acres)	2-3 Miles (Acres)	3-10 Miles (Acres)	Over Ten Miles (Acres)
Alameda .....	846	554	135	6,604	13,431
Butte .....				4,743	30,873
Calaveras .....				2,880	3,025
El Dorado .....	156	850	1,630	17,081	74,612
Fresno .....	200	0	2,000	40,000	105,480
Kern .....	160	80	910	43,950	580,814
Madera .....				21,589	110,095
Marin .....	5,064	5,238	5,207	26,351	34,824
Mendocino .....	2,149			3,967	1,623
Monterey .....		3,000	3,000	5,000	171,162
Placer .....					4,951
Riverside .....				3,319	
San Benito .....			900	12,000	229,500
San Bernardino .....	1,026		1,601		271
San Mateo .....	2,000	550	500	5,800	23,650
Santa Barbara .....	123		2,771	1,109	24,977
Santa Clara .....	6,890	11,642	12,342	63,732	53,912
Santa Cruz .....					1,750
Solano .....	631	1,059	1,276	330	
Sonoma .....	102	1,655	5,762	51,606	17,469
Tehama .....			329	8,060	33,601
Tulare .....	329	339	1,189	19,354	71,746
Tuolumne .....			226	18,839	30,434
Total .....	19,676	24,967	39,778	359,317	1,618,230

While an overwhelming proportion of the land is more than ten miles from any city, a substantial amount—399,095 acres—lies between two and ten miles of a city. An indeterminate additional amount is situated close to other populated areas.

#### *Policies of Counties*

The counties were asked for information on the policies followed by them in receiving and processing applications. (Table IV)

Two counties stated that it was their policy to offer contracts on all land that qualifies as prime under the California Land Conservation Act, regardless of its location. Sixteen counties stated that it was not their policy to do so.

Sixteen counties stated that it was their policy to offer agreements on all land, regardless of location, that meets the commercial agriculture criteria adopted by the county. Six counties stated that it was not their policy to do so.

Six counties stated that it was their policy to offer agreements on any land upon the request of the owner of the land. Sixteen stated that it was not their policy to do so.

Sixteen counties have established by ordinance a minimum number of acres that must be included within a preserve. Six counties have no such minimum. The minimums range from five acres to 100 acres.

Twelve counties have imposed a minimum acreage into which land under agreement or contract may be divided. Ten have not. Four have included the minimum in the provisions of the contract or agreement. Six have imposed the minimum through a zoning ordinance. Two others have done both.

Twenty-two counties stated that their planning staffs review applications for agricultural preserves. Thirteen counties state that their



TABLE IV  
RESPONSES OF COUNTIES TO VARIOUS QUESTIONS RELATING TO POLICY AND  
ADMINISTRATION OF CALIFORNIA LAND CONSERVATION ACT  
OF 1965 (WILLIAMSON ACT)—1968-1969

	Contracts offered on any Prime Land	Agreements offered on any commercial agricultural land	Agreements offered on any land on request	Minimum acres in agricultural preserve	Minimum acres land can be divided	Minimum Imposed in Agreement	Minimum Imposed in Zoning Ordinance
Alameda.....	No	No	No	100	<sup>d</sup> 100	<sup>d</sup> X	
Butte.....		Yes	No			X	
Calaveras.....	No	Yes	No	<sup>a</sup> 160			
El Dorado.....		Yes	No	20	20		X
Fresno.....	No	No	No	100	<sup>e</sup> 20	X	
Kern.....	Yes	Yes	Yes				
Madra.....	Yes	Yes	Yes		40		
Marin.....	No	Yes	Yes	100			
Mendocino.....	No	Yes	No	100	<sup>b</sup> 10		X
Monterey.....	No	Yes	Yes	40			X
Placer.....	No	No	No				
Riverside.....	No	Yes	No	100	5		X
San Benito.....	No	Yes	No				
San Bernardino.....	No	No	No	5	5		X
San Mateo.....	No	No	No	5			
Santa Barbara.....	No	Yes	No	<sup>b</sup> 100	<sup>f</sup> 20	X	X
Santa Clara.....	No	Yes	No				
Santa Cruz.....	No	Yes	No	100	10		X
Solano.....	No	No	No		<sup>g</sup> 10		X
Sonoma.....		Yes	No	100	10	X	
Tehama.....		Yes	Yes	<sup>c</sup> 100	10	X	X
Tulare.....		Yes	Yes	40			
Tuolumne.....	No	Yes	No	40			

<sup>a</sup> 160 acre minimum or \$2,000 annual gross product.

<sup>b</sup> 40 acre minimum on prime land, 100 acre minimum on non-prime land.

<sup>c</sup> 50 acre minimum on prime land, 100 acre minimum on non-prime land.

<sup>d</sup> Under consideration.

<sup>e</sup> 20 acres on prime land, 40 acres on non-prime land.

<sup>f</sup> 20 acres on prime land, 100 acres on non-prime land.

<sup>g</sup> 10 acres on prime land, 20 acres on non-prime land.

<sup>b</sup> 10 acres in the Type I preserve, 100 acres in the Type II preserve.

planning commissions review and make recommendations on proposals for establishing preserves. Nine counties state that they do not.

Fourteen counties have assigned the responsibility of receiving and processing proposals to establish preserves to the Planning Department. One assigned it to the Planning Commission; two to the Assessor, two to the County Clerk; one to the Agricultural Commissioner; and one to the Planning and Inspection Department.

Five counties state that they give consideration to inclusion of land within preserves without an initial request from the property owner. Seventeen state that they do not.

Thirteen counties consider commercial timberland eligible for inclusion in preserves and for agreements. Three do not.

Sixteen counties establish preserves in accordance with their general plan. Four do not.

Nineteen counties stated that it is intended that agreements executed by their county will qualify under Section 422 of the Revenue and Taxation Code for assessment under Section 423 of that Code.

Seventeen counties having contracts or agreements in effect on the lien date indicate that the subject land was assessed for the 1968-69 tax year according to the provisions of Section 423, Revenue and Taxation Code. One county indicated that land subject to agreement was assessed according to Section 402.1, but that after January 1st, 1969, it would be assessed under Section 423.

TABLE IV—Continued

**RESPONSES OF COUNTIES TO VARIOUS QUESTIONS RELATING TO POLICY AND  
ADMINISTRATION OF CALIFORNIA LAND CONSERVATION ACT  
OF 1965 (WILLIAMSON ACT)—1968-1969**

	Quality of land under Agreement	Planning Staff Review of Preserves and Agreements	Planning Commission Review of Preserves and Agreements	Department Responsible for Adminis- tration	Considers Preserves Without Owner's Request	Includes Commercial Timber in Preserves	Preserves in Accordance with General Plan
Alameda.....	Av.	Yes	Yes	P <sup>c</sup>	Yes	Yes	Yes
Butte.....	Be.A.	Yes	No	P <sup>a</sup>	Yes	Yes	Yes
Calaveras.....	Av.	Yes	Yes	P <sup>a</sup>	No	Yes	Yes
El Dorado.....	Av.	Yes	Yes	P <sup>c</sup>	No	Yes	
Fresno.....	Av.	Yes	No	P <sup>c</sup>	Yes	Yes	Yes
Kern.....	Av.	Yes	No	Asr.	No		Yes
Madera.....							
Marin.....	Av.	Yes	Yes	P <sup>c</sup>	Yes	Yes	No
Mendocino.....	Av.	Yes	Yes	P <sup>c</sup>	No	Yes	Yes
Monterey.....	Be.A.	Yes	No	Clk	No		No
Placer.....	Av.	Yes	Yes	P <sup>c</sup>	No	Yes	Yes
Riverside.....	Best	Yes	Yes	P <sup>c</sup>	Yes	No	Yes
San Benito.....	Av.	Yes	No	Asr.	No		Yes
San Bernardino.....	Best	Yes	No	AC <sup>b</sup>	No		Yes
San Mateo.....	Av.	Yes	Yes	P <sup>c</sup>	No	Yes	Yes
Santa Barbara.....	Av.	Yes	Yes	P <sup>c</sup>	No		Yes
Santa Clara.....	Be.A.	Yes	No		No	Yes	Yes
Santa Cruz.....	Av.	Yes	Yes	P <sup>c</sup>	No	No	Yes
Solano.....	Av.	Yes	Yes	P <sup>c</sup>	No		Yes
Sonoma.....	Be.A.	Yes	Yes	P <sup>c</sup>	No	Yes	
Tehama.....	Av.	Yes	Yes	PC <sup>c</sup>	No	Yes	No
Tulare.....	Be.A.	Yes	No	Clk <sup>d</sup>	No	Yes	Yes
Tuolumne.....	Be.A.	Yes	No	P <sup>c</sup>	No	No	No

<sup>a</sup> Plans and Inspections.<sup>b</sup> Agricultural Commission.<sup>c</sup> Planning Commission.<sup>d</sup> Clerk of Board of Supervisors.<sup>e</sup> Planning Department.

TABLE V

**CAPITALIZATION RATES USED BY COUNTY ASSESSORS IN VALUING LAND SUBJECT  
TO CONTRACTS AND AGREEMENTS EXECUTED PURSUANT TO CALIFORNIA  
LAND CONSERVATION ACT OF 1965 (WILLIAMSON ACT)—1968-69**

Alameda.....	7½%
Butte.....	7%
Calaveras.....	7%
El Dorado.....	7½%
Fresno.....	8½%
Kern.....	8%
Madera.....	7%
Marin.....	7%
Mendocino.....	9%
Monterey.....	5% plus an allowance for property taxes
Placer.....	6-9%
Riverside.....	8½%
San Benito.....	6%
San Bernardino.....	6½% on non-prime land 8½% on prime land
San Mateo.....	8-8½%
Santa Barbara.....	3% plus an allowance for property taxes on non-prime land 5% plus allowance for property taxes on prime land
Santa Clara.....	7½%
Santa Cruz.....	Various
Solano.....	7.1%
Sonoma.....	*
Tehama.....	8½%
Tulare.....	8%
Tuolumne.....	7%

\* County did not respond to question.

*Capitalization Rates Used*

Table V shows the capitalization rates used for 1968-9 by county assessors in valuing land subject to contract or agreement.

*Cancellations*

Of those counties which have actually signed contracts or agreements, only three have received requests for cancellation. One such request has been approved. In the case of this cancellation, the landowner paid the full penalty of fifty percent of the new assessed valuation of the property.

*Notices of Non-Renewal*

Only two counties have received notices of non-renewal from landowners. No county has given such a notice.

*Reasons for Offering Only Agreements (Table VI)*

The counties which offer only agreements were asked the reasons for this decision. Seven stated that among their reasons was the fact that they had little or no prime land in the county. Twelve stated that landowners preferred agreements. Nine stated that they were unwilling to obligate the county to make offset payments to the landowner. Two stated that the \$1 per acre due from the State was insufficient inducement. Eleven stated that they did not want the State (Director of Agriculture) involved. Six stated that it was because of the 100 acre minimum preserve size required for contracts. And eight gave other reasons, most of which reflected their desire to keep state government out of the program.

TABLE VI  
REASONS GIVEN BY COUNTIES FOR OFFERING AGREEMENTS ONLY

	No Prime Land	Landowners Preferred Agreements	Payments to Landowners	State Payments Inadequate	Objection to Director of Agriculture	Technical Require- ments	Other
Alameda.....		X			X		X
Butte.....							
Calaveras.....	X		X		X		X
El Dorado.....	X	X				X	
Fresno.....							
Kern.....							
Madera.....							
Marin.....	X						
Mendocino.....		X	X				
Monterey.....		X	X		X	X	X
Placer.....	X	X			X	X	X
Riverside.....		X	X		X		X
San Benito.....		X			X	X	X
San Bernardino.....		X	X		X	X	
San Mateo.....	X						
Santa Barbara.....		X	X	X	X		
Santa Clara.....		X	X		X		X
Santa Cruz.....		X	X	X	X		X
Solano.....							
Sonoma.....	X		X				
Tehama.....		X					
Tulare.....		X			X	X	
Tuolumne.....	X						

***Reasons for Landowners Not Signing Contracts or Agreements (Table VII)***

In response to the question as to the reasons most frequently expressed by landowners for not entering contracts or agreements, the most prominent reasons given were:

- (1) No assurance of effect of contract or agreement upon assessed valuation (7).
- (2) The landowner wants to be free to sell when a good offer comes along (8).
- (3) No way of knowing how land will be assessed after notice of non-renewal (4).
- (4) Cancellation too difficult to obtain (4).
- (5) Wants heirs to be able to sell free of restriction in the event it is necessary to sell the land in order to settle the estate (4).

***County Evaluation of Landowner Objections***

County officials responsible for preparing answers to questionnaires indicated that of the reasons for landowner opposition included in the questionnaire the ones that had the most validity were: (1) the question of the manner of assessment after notice of non-renewal; (2) the lack of assurance that agreements will be considered in inheritance tax appraisals; (3) the question of the freedom of the landowner to sell his land when a good offer comes along; (4) the question of the effect of the contract or agreement upon assessed valuation; (5) difficulty of cancellation; and (6) the problem of the ability of the landowner to pay the increased taxes that would begin to be levied after notice of non-renewal and which would continue to the end of the restriction.

***Local Government Objections***

From the standpoint of the public, the greatest weaknesses of the Land Conservation Act appeared to be:

- (1) that the ten year minimum term is too short;
- (2) that not enough choice is given the county as to land that is to be put under agreement;
- (3) that an agreement is too easy to cancel;
- (4) that it is not serving as a tool of county planning;
- (5) that the Act is too complicated.

**PART II**

All counties were asked a number of questions related to the land use problem. (Table VIII)

***General Plans***

Forty-two of the counties stated that they had adopted a general plan, while seven stated that they had not. Of those plans adopted, forty-one included areas to be reserved for agriculture; Forty-two, areas to be reserved for recreation; twenty-nine, areas to be reserved for the enjoyment of scenic beauty; and twenty-six, areas to be reserved for the use of natural resources. Eight counties stated that they were in the process of preparing a general plan. One county, Imperial, stated that it neither had a plan nor was it in the process of preparing one.

TABLE VII  
REPORT FROM COUNTIES SHOWING REASONS GIVEN BY LANDOWNERS  
FOR NOT ENTERING CONTRACTS OR AGREEMENTS \*

	Term too long	Nine years Notice too long	Taxes after Notice of Non-renewal	Uncertainty of Assessment after Notice	No Assurance of Effect	Cancellation too Difficult	Penalty too high	Wants to be free to sell	Valuation for Inheritance Tax uncertain	Heirs should be free to sell	Other
Alameda.....				X X	X X	X			X	X	
Butte.....											
Calaveras.....								X X X		X	
El Dorado.....		X			X	X					
Fresno.....											
Kern.....											
Madera.....											
Marin.....								X			
Mendocino.....						X					
Monterey.....	X										
Placer.....											
Riverside.....											X X
San Benito.....											
San Bernardino.....		X			X	X	X	X X X	X	X	
San Mateo.....					X						
Santa Barbara.....					X						
Santa Clara.....											
Santa Cruz.....								X			
Solano.....											
Sonoma.....					X						
Tehama.....					X						
Tulare.....	X	X						X			
Tuolumne.....											

\* Counties were asked to respond by giving the percentage of landowners who expressed various objections. This Table shows those counties where 50 percent or more of landowners expressed the objections listed in the Questionnaire.



TABLE VIII  
ALL COUNTIES—GENERAL INFORMATION

[illegible]



TABLE VIII—Continued  
ALL COUNTIES—GENERAL INFORMATION

	Scenic Easements Offered	Scenic Easements Accepted		Other Plans for Open Space	Imposes Excl. Agric. Zoning in Opposite to Owner
		No.	Acres		
Alameda	No			No	No
Alpine	No			Yes	No
Amador	No			Yes	No
Butte	No			Yes	No
Calaveras	No			No	No
Colusa	No			Yes	No
Contra Costa	No			No	No
Del Norte	No			Yes	No
El Dorado	Yes	3	320	No	No
Fresno	No			No	No
Glenn	No			No	No
Humboldt	No			No	Yes
Imperial	No			No	No
Inyo	No			No	No
Kern	No			Yes	No
Kings	No			Yes	No
Lake	No			Yes	No
Lassen	No			Yes	No
Los Angeles					
Madera	Yes	3	150	No	No
Marin	No			Yes	No
Mariposa	No			Yes	No
Mendocino	No			No	No
Merced	No			No	No
Modoc	No			Yes	Yes
Mono	Yes	27	1,441	Yes	Yes
Monterey	No			Yes	Yes
Napa	No			Yes	No
Nevada	No			No	No
Orange	No			Yes	No
Placer	No			Yes	No
Plumas	No			Yes	Yes
Riverside	No			Yes	Yes
Sacramento	No			Yes	No
San Benito	No			No	No
San Bernardino	No			No	No
San Diego	No			Yes	Yes
San Francisco	No			Yes	No
San Joaquin	No			Yes	No
San Luis Obispo	No			Yes	No
San Mateo	No			No	No
Santa Barbara	No			Yes	No
Santa Clara	No			No	No
Santa Cruz	No			No	No
Shasta	No			No	No
Sierra	No			No	Yes
Siskiyou	No			Yes	No
Solano	No			No	No
Sonoma	No			Yes	No
Stanislaus	No			No	No
Sutter	No			Yes	No
Tehama	No			No	No
Trinity	No			Yes	No
Tulare	No			No	No
Tuolumne	No			Yes	No
Ventura	No			Yes	No
Yolo	No			Yes	No
Yuba	No			No	No

### *Exclusive Agricultural Zoning*

Seventeen counties stated that they had imposed agricultural or other open space zoning upon land without the approval of the owner. Thirty counties stated that they had not.

Thirty-three counties reported that they utilize exclusive agricultural zoning and that they have a total of 9,644,990 acres subject to such zoning ordinances. Twenty-seven of these counties furnished the committee with the criteria used in imposing such zoning.

Seven counties state that they have imposed exclusive agricultural zoning upon land in opposition to the wishes of the owner of the land. Thirty-eight counties state that they have not.

Eleven counties stated that in their county it was very difficult to gain approval for the removal of the exclusive agricultural zoning. Eleven counties described it as difficult; five as easy, one as automatic.

### *School District Impact Projections*

Only two counties stated that they had prepared any projections which would indicate the impact upon school districts or the county which would result from various degrees of implementation of the Land Conservation Act. Thirty-two counties stated that they had not made such projections.

### *Economic Studies*

Thirteen counties stated that they had prepared economic studies which would indicate the long range contribution of agriculture to the community, with emphasis upon those soils which are in danger of being displaced by urban growth. Twenty-nine counties stated that they had made no such studies.

### *Community Services Studies*

Only two counties reported that they had made any studies which would indicate the cost of providing community services for each additional residential unit. One of these counties stated that their studies indicated that the cost to the community for each additional single-family dwelling unit ranged from \$280 to \$650 per year. Each new two-family dwelling involved a community cost of \$272 per year, and each multiple-family dwelling unit incurred costs of \$168 per year. Forty counties have made no such studies.

### *Use Value Assessment and Zoning Stability*

Thirty-two counties expressed the opinion that collateral reduction in assessed valuation would contribute to the stability and permanence of zoning as a tool in land use regulation. Twelve counties stated that they did not believe that it would. Only one of the counties having utilized the Land Conservation Act answered this question in the negative, while the other ten were among those counties which have not utilized the Act. Only one of the ten has even so much as held meetings on the Land Conservation Act.

### *Land Conservation Act and Scenic Highway Corridors*

Thirty counties feel that a program similar to the Land Conservation Act would be useful in the control of land use within scenic highway



corridors, and thirty feel that such a program would be useful in the control and preservation of urban open space. Eleven counties felt that such a program would be of no help in either instance.

#### **Advisory Committees**

Twenty counties had formed an advisory committee to assist the Board of Supervisors in connection with the Land Conservation Act. Seventeen counties had not.

#### **Agreement Terms**

Eighteen counties believe that the terms of agreements should be more clearly spelled out by law. Seventeen counties did not believe that they should.

#### **Scenic Easements**

Three counties have accepted or offered to accept scenic easements or other rights to land as authorized by Section 6950, *et seq.*, of the Government Code. Thirty-seven counties have not. The three counties that have done so have accepted such grants on thirty-three parcels, totalling 5,911 acres.

#### **Other Plans for Land Conservation**

Twenty-seven counties state they have firm policies or plans for preservation of agricultural or other open space land by means other than the Land Conservation Act. Twenty-five of these counties state that the other plans are zoning. One county states that it proposes to do so through implementation of its general plan, and one county did not describe its proposed method. Twenty counties state that they have no other plans beyond implementation of the Land Conservation Act.

#### **Inventory of Agricultural Land in Counties (Tables IX and X)**

The counties were asked to provide the Committee with the number of acres of agricultural land within the county as well as the number of acres of prime agricultural land as defined by the California Land Conservation Act. Where the county did not supply the number of acres of agricultural land, the Committee substituted the number of acres of land in farms in the county as indicated in the Census of Agriculture for 1964. Using these two sets of figures (See Tables IX and X) the total number of acres of agricultural land in California is 39,092,552. Of this amount, 17,850,832 is included in the twenty-three counties which have taken action under the California Land Conservation Act. The remaining 21,241,720 acres are within the thirty-five counties which have taken no action under the Act. The U.S. Census of Agriculture, 1964, shows a total of 37,010,925 acres of land in farms in California. About half of this amount is situated in the twenty-three counties which have implemented the Land Conservation Act, while the other half lies in the remaining thirty-five counties.

Where the county failed to give the Committee its estimate of the number of acres of prime agricultural land lying within its county, the Committee substituted the number of acres of Class I and II soils, as listed in the Conservation Needs Inventory prepared by the U.S.D.A. Soil Conservation Service on January 20, 1966. Using the combination of these two sets of figures, there are 7,174,424 acres of prime agricul-



TABLE IX  
**AGRICULTURAL LAND INVENTORY**  
**Counties Which Have Implemented Williamson Act**

	<sup>1</sup> Land in Farms	<sup>2</sup> Class I & II Soils	<sup>3</sup> Irrigated Land, 1964	<sup>4</sup> Agricultural Land	<sup>5</sup> Prime Agri. Land
Alameda .....	309,843	54,800	21,227	304,643	34,532
Butte .....	680,320	176,900	170,433	680,320	230,000
Calaveras .....	362,644	1,500	4,393	550,000	400
El Doardo .....	197,696	3,700	5,796	311,040	3,537
Fresno .....	2,201,140	855,700	1,060,314	1,673,154	865,576
Kern .....	3,605,404	717,300	603,659	3,433,121	550,000
Madera .....	774,738	137,900	212,052	*774,738	†137,900
Marin .....	172,886	25,400	688	149,457	0
Mendocino .....	1,068,071	88,500	14,614	*1,068,071	†88,500
Monterey .....	1,489,324	222,200	177,906	1,489,324	100,000
Placer .....	248,934	37,600	28,571	300,000	10,000
Riverside .....	738,582	315,400	228,673	500,000	234,960
San Benito .....	779,007	75,900	38,820	890,000	55,000
San Bernardino .....	1,789,775	134,600	81,173	101,000	85,000
San Mateo .....	83,273	4,000	5,517	105,000	32,000
Santa Barbara .....	926,953	76,500	65,079	620,000	80,000
Santa Clara .....	458,403	149,100	78,665	567,900	130,000
Santa Cruz .....	103,572	17,900	23,175	84,000	20,000
Solano .....	381,348	87,200	112,355	323,539	117,500
Sonoma .....	694,094	71,200	27,985	*694,094	†71,200
Tehama .....	1,168,133	184,800	72,613	1,477,825	135,129
Tulare .....	1,403,606	350,000	585,361	*1,403,606	†350,000
Tuolumne .....	168,947	8,000	2,272	350,000	500
Total .....	19,806,693	3,796,100	3,624,341	17,850,832	3,331,734
Other Counties .....	17,204,232	3,558,000	3,974,357	21,241,720	3,840,870
State Total .....	37,010,925	7,354,100	7,598,698	39,092,552	7,172,604

<sup>1</sup> 1964 U.S. Census of Agriculture.

<sup>2</sup> Conservation Needs Inventory, U.S.D.A. Soil Conservation Service, Jan. 20, 1966.

<sup>3</sup> U.S. Census of Agriculture—1964.

<sup>4</sup> County Survey, Joint Committee on Open Space Land, July 1968.

<sup>5</sup> County Survey, Joint Committee on Open Space Land, July 1968.

\* County did not respond to this portion of questionnaire. Figures shown are acres of land in farms, Census of Agriculture, 1964.

† County did not respond to this portion of questionnaire. Figures shown are acres of Class I and II soils, Conservation Needs Inventory, U.S.D.A. Soil Conservation Service.

tural land in California. 3,331,734 acres are situated in the twenty-three counties which have implemented the California Land Conservation Act. The remaining 3,840,870 acres are situated in the other thirty-five counties. There is an interesting consistency between the number of acres of prime agricultural land resulting from the questionnaire, the number of acres of Class I and II soils, as reflected in the Conservation Needs Inventory, and the number of acres of land irrigated in 1964 according to the U.S. Census of Agriculture for 1964. The comparative figures appear to indicate that either the counties inclined to underestimate the amount of their land that is prime or that there has been a substantial reduction in the amount of prime land during the several years since the other reports were completed.

### PART III

The Committee requested information on the action of those counties which had not signed agreements or contracts by March 4, 1968, but had taken some steps toward implementation of the Act by that date.

By the date of this report, such information was so meager as to have little importance and is therefore omitted.

TABLE X  
**AGRICULTURAL LAND INVENTORY**  
**Counties Which Have Not Implemented Williamson Act**

	<sup>1</sup> Land in Farms	<sup>2</sup> Class I & II Soils	<sup>3</sup> Irrigated Land, 1964	<sup>4</sup> Agricultural Land	<sup>5</sup> Prime Agri. Land
Alpine.....	12,716	1,500	2,692	*12,716	†1,500
Amador.....	207,089	9,200	3,815	204,189	None
Colusa.....	532,151	139,400	163,606	*532,151	†139,400
Contra Costa.....	303,399	51,400	56,407	350,000	60,000
Del Norte.....	35,948	24,000	4,494	35,000	15,000
Glenn.....	631,024	149,200	151,298	570,000	138,995
Humboldt.....	787,165	108,000	19,184	*787,165	†108,000
Imperial.....	592,982	233,600	429,594	*592,982	†233,600
Inyo.....	370,833	19,800	19,552	3,500,000	30,000
Kings.....	876,773	315,700	436,037	857,000	387,000
Lake.....	246,112	30,000	15,322	803,840	250,000
Lassen.....	651,932	91,100	61,991	2,500,000	None
Los Angeles.....	585,340	228,100	78,813	*585,340	†228,100
Mariposa.....	306,462	7,000	1,305	*306,462	†7,000
Merced.....	1,044,394	352,500	377,817	1,161,273	412,168
Modoc.....	900,347	163,400	133,759	840,000	30,000
Mono.....	70,261	17,500	11,386	89,000	17,000
Napa.....	262,743	30,900	10,909	131,590	20,000
Nevada.....	197,610	16,300	7,797	147,700	17,787
Orange.....	242,839	146,200	54,893	165,000	48,900
Plumas.....	123,480	39,500	31,320	*123,480	†39,500
Sacramento.....	568,410	36,000	169,237	432,000	200,000
San Diego.....	695,364	118,700	52,436	680,000	5,000
San Francisco.....	58	-----	38	*58	0
San Joaquin.....	963,675	258,700	496,948	*963,675	†258,700
San Luis Obispo.....	1,525,435	98,900	30,357	1,505,400	45,000
Shasta.....	743,978	166,900	56,797	744,000	75,000
Sierra.....	51,379	13,600	10,741	*51,379	†13,600
Siskiyou.....	994,889	143,900	113,788	199,000	135,000
Stanislaus.....	811,591	140,200	349,694	797,720	381,720
Sutter.....	386,426	108,100	195,572	*386,426	†108,100
Trinity.....	133,064	8,200	2,432	*133,064	†8,200
Ventura.....	436,931	134,800	103,161	120,000	†134,800
Yolo.....	594,322	133,900	252,184	617,000	270,000
Yuba.....	317,110	21,800	68,981	*317,110	†21,800
<b>Total.....</b>	<b>17,204,232</b>	<b>3,558,000</b>	<b>3,974,357</b>	<b>21,241,720</b>	<b>3,840,870</b>
<b>Other Counties.....</b>	<b>19,506,693</b>	<b>3,796,100</b>	<b>3,624,341</b>	<b>17,850,832</b>	<b>3,331,734</b>
<b>State Total.....</b>	<b>37,010,925</b>	<b>7,354,100</b>	<b>7,598,698</b>	<b>39,092,552</b>	<b>7,172,604</b>

<sup>1</sup> 1964 U.S. Census of Agriculture.<sup>2</sup> Conservation Needs Inventory, U.S.D.A. Soil Conservation Service, Jan. 20, 1966.<sup>3</sup> U.S. Census of Agriculture—1964.<sup>4</sup> County Survey, Joint Committee on Open Space Land, July 1968.<sup>5</sup> County Survey, Joint Committee on Open Space Land, July 1968.

\* County did not respond to this portion of questionnaire. Figures shown are acres of land in farms. Census of Agriculture, 1964.

† County did not respond to this portion of questionnaire. Figures shown are acres of Class I and II soils. Conservation Needs Inventory, U.S.D.A. Soil Conservation Service.

However, by the date of this report, the Committee had received indications that agreements would be signed, to be effective during the 1969-70 fiscal year, by the following counties:

Amador, Contra Costa, Napa, Sacramento, San Diego, San Joaquin, San Luis Obispo, Stanislaus, Ventura and Yolo.

## PART IV

### EFFECTS UPON SCHOOL DISTRICTS

When land is made subject to a contract or agreement pursuant to the California Land Conservation Act, it is valued for assessment purposes according to the provisions of Section 423 of the Revenue and Taxation Code. The effect of such valuation is usually a lower assessed valuation and, hence, a lower tax.

TABLE XI

**COUNTIES HAVING LAND UNDER CONTRACT OR AGREEMENT PURSUANT TO CALIFORNIA LAND CONSERVATION ACT OF 1965  
(WILLIAMSON ACT), TOTAL LAND AREA, AGRICULTURAL LAND, PRIME AGRICULTURAL LAND, LAND UNDER  
CONTRACT OR AGREEMENT, PRIME LAND UNDER CONTRACT OR AGREEMENT 1968-69**

County Land Area	County Agricultural Land (Table IX)	Agricultural Land in County (Percent)	Land Under Contract or Agreement (Table II)	Agricultural Land Under Contract or Agreement (Percent)	Prime Agricultural Land in County (Table IX)	Agricultural Land that is Prime (Percent)	Prime Agricultural Land Under Contract or Agreement 1968-69	Prime Land Under Contract or Agreement (Percent)
Alameda.....	469,120		21,570	7.1	34,532	11.3	705	2.0
Butte.....	1,064,320	64.9	35,616	5.2	230,000	33.8	4,743	2.1
Calaveras.....	657,280	83.6	5,905	1.1	400	1.1	1,909	56.5
El Dorado.....	1,096,900	28.3	94,329	30.3	3,537	1.1	38,483	4.4
Fresno.....	3,816,960	43.8	147,680	8.8	865,576	51.7	*38,110	6.9
Kern.....	5,217,280	65.8	*625,914	18.2	550,000	16.0	5,552	4.0
Madera.....	3,433,121	65.4	134,684	17.3	137,900	17.8		
Marin.....	774,738	56.4	76,687	51.3	0			
332,800	139,457	44.9	7,739	0.7	88,500	8.3	159	0.2
Mendocino.....	1,068,071	47.9	182,162	12.2	100,000	6.7	18,000	18.0
2,244,480	1,459,324	70.0	4,951	1.7	10,000	3.3		
Monterey.....	2,127,360	32.9	3,319	1.7	234,960	47.0	3,279	1.4
Placer.....	911,360	10.9	242,400	27.2	55,000	6.2	400	.7
4,593,280	500,000	99.6	2,898	2.9	85,000	84.1	2,627	3.1
Riverside.....	890,000	36.1	32,500	30.0	32,000	30.4	1,611	2.0
San Benito.....	101,000	35.4	28,980	4.7	80,000	12.9	2,096	1.6
San Bernardino.....	12,833,840	68.2	145,548	26.2	130,000	22.9	260	1.3
San Mateo.....	290,560	29.9	17,500	2.1	20,000	23.8	114	.1
Santa Barbara.....	1,752,320	61.1	3,296	1.0	117,500	36.3		
Santa Clara.....	833,280	98.7	76,594	11.0	71,200	10.2		
Santa Cruz.....	280,960	77.6	41,990	2.8	135,129	9.1	3,490	2.6
Solano.....	520,280	45.3	92,957	6.6	350,000	24.9	9,645	2.8
Sonoma.....	1,010,560	24.0	49,499	14.1	500	.1		
1,904,640	1,477,825							
Tulare.....	3,096,320							
1,455,360	350,000							
Total.....	48,833,920	36.6	*2,061,968	11.6	3,334,734	18.6	131,273	3.9

\* Includes 38,110 acres of prime land under contract in Kern County not approved by the Director of Agriculture and subject to litigation.

† Report of Senate Permanent Fact Finding Committee on Natural Resources, Section II, *Public Land Ownership and Use in California* (Table 103).

If local taxing agencies which rely upon ad valorem property taxes are to receive the same amount of revenue from the reduced total assessed valuation, they must increase the tax rate.

As a part of its survey of counties, the Committee requested information from which it could evaluate the effects of placing land under contract or agreement.

Table XII lists assessed valuations of the counties having land under contract or agreement in 1968-69. It also shows the assessed valuation of all land within those counties and the assessed valuation of land outside incorporated areas. The percentage of the total assessed valuation of the counties which these two categories of land comprise is also shown.

In addition, Table XII shows the total difference in assessed value resulting in each county from having land under contract or agreement in 1968-69. The total difference in assessed valuation for all such counties is seen to be \$42,011,526. The average reduction in assessed value per acre is slightly greater than \$20. The percentage reduction in assessed valuation in counties is slight and can be offset by a slight increase in county tax rates. School districts, however, may suffer relatively greater losses in assessed valuation and enjoy less freedom to cope with them, in order to determine the extent of such impact the Committee sought information concerning each of the school districts affected during 1968-69.

TABLE XII

**COUNTIES WITH LAND SUBJECT TO CONTRACT OR AGREEMENT PURSUANT  
TO CALIFORNIA LAND CONSERVATION ACT OF 1965  
(WILLIAMSON ACT)—1968-69**

	Assessed Value of all Property in County*	Assessed Value of all Land in County*	Assessed Value of Land Outside Incorporated Areas*	Assessed Value of Land Outside Incorporated Areas as Percent of Assessed Value of all Land	Assessed Value of Land Outside Incorporated Areas as Percent of Assessed Value of all Property	Difference in Assessed Value Due to Land Under Contract or Agreement
Alameda.....	2,270,631,209	666,552,745	69,897,975	10	3.1	606,450
Butte.....	260,100,250	97,371,565	82,738,135	85	31.8	573,020
Calaveras.....	60,585,085	30,577,420	30,137,010	99	49.7	90,000
El Dorado.....	178,791,455	90,933,870	59,469,500	65	33.3	1,585,652
Fresno.....	979,623,914	365,800,362	272,091,319	73	27.9	3,563,927
Kern.....	999,054,260	476,114,790	420,285,490	89	42.0	7,744,900
Madera.....	149,002,350	61,349,535	56,138,080	91	37.6	1,067,280
Marin.....	562,028,188	247,297,608	94,046,277	33	16.7	5,392,609
Mendocino.....	128,564,130	50,681,730	41,600,710	82	32.4	319,530
Monterey.....	596,963,774	200,517,417	123,518,842	62	20.7	818,405
Placer.....	225,246,520	86,422,280	69,321,016	80	30.7	2,193,790
Riverside.....	1,120,431,850	457,498,630	239,925,400	53	21.4	982,220
San Benito.....	72,159,460	31,704,730	28,192,500	90	38.9	1,027,550
San Bernardino.....	1,496,266,800	425,172,350	266,539,220	62	17.9	1,281,030
San Mateo.....	1,664,133,291	583,531,795	94,071,655	18	5.6	3,177,614
Santa Barbara.....	649,377,743	271,328,192	167,913,711	62	25.9	1,306,680
Santa Clara.....	2,432,737,380	753,218,540	165,028,160	22	6.8	1,072,209
Santa Cruz.....	306,342,210	137,235,800	91,019,010	67	29.7	(135,300)
Solano.....	331,629,585	121,700,020	63,504,510	52	19.1	
Sonoma.....	446,409,927	156,567,685	103,700,515	67	23.1	6,106,830
Tehama.....	91,330,645	33,666,560	29,482,430	88	32.3	293,810
Tulare.....	485,459,212	186,512,280	153,217,285	85	32.6	2,676,200
Tuolumne.....	66,646,395	25,826,200	23,902,790	93	35.9	267,120
Total.....						42,011,526

\*Source: California State Controller:  
*Annual Report of Assessed Valuation and Tax Rates (as of September 1968) of the Counties of California.*



While it is impossible to reach anything other than the most general conclusions from this information, or to predict future patterns of impact, it is of considerable value to be able to see the effects upon these districts during the first year of use-value assessment.

The counties reported that 217 elementary and 44 unified school districts had land under contract or agreement during 1968-69. While the Committee did not seek information on high school districts, some were reported. Twelve are included in the charts. However, because high school districts represent a combination of elementary districts, they will not be discussed in this report.

Table XIII lists, by county, the elementary and unified school districts within which land was subject to Williamson Act contracts or agreements during the 1968-69 fiscal year. It shows the number of acres of land affected, the actual assessed value of the land in the district, the estimated assessed value that would have prevailed had the land not been subject to contract or agreement, and the difference in assessed valuation resulting. The table also shows the average difference in assessed value per acre in each district, the total assessed valuation of all property within the district and the percentage difference in total assessed valuation resulting from the contracts or agreements.

Differences per acre range from \$1 in the Coalinga Unified School District in Monterey and San Benito Counties to \$3,163 per acre in the Ravenswood District in San Mateo County. These differences undoubtedly reflect the difference in quality of the land, and the difference between the market value of the land and its value based upon its income producing capacity in its restricted use. The average per acre difference by county ranges from \$488 in San Bernardino County to \$5 in Monterey and Tuolumne Counties. One county, Santa Cruz, reported an actual gain of \$77 per acre resulting from use-value assessment.

The percentage difference in assessed valuation varied from 34.1% in the Lincoln District of Marin County to negligible amounts in a number of districts. The percentage difference by county varied from 1.42% in San Benito to three hundredths of one percent in Alameda County, and a negligible percentage in Santa Clara County. Within these extremes the differences were many and reflect the relative importance of the assessed valuation of the land under contract to the total assessed valuation of the District.

The percent difference in assessed value (Column 8) also indicates the percentage by which the district tax rate would have to be increased in order to produce the same amount of revenue from the lower assessed valuation. This constitutes one important measure of impact.

Table XIV is a three-year tabulation of average daily attendance, assessed valuation per unit of average daily attendance, assessed valuation and tax rates for all of the school districts affected during 1968-69.

In Table XV are listed the districts where the difference in assessed valuation resulting from contracts or agreements amounts to one percent or more of the total assessed valuation of the district. This list includes 81 elementary districts and 10 unified districts.



These districts are situated in 17 counties—as follows:

Butte -----	2	San Bernardino -----	2
El Dorado -----	10	San Mateo -----	3
Fresno -----	8	Santa Barbara -----	4
Kern -----	14	Santa Clara -----	1
Madera -----	3	Sonoma -----	20
Marin -----	6	Tehama -----	3
Monterey -----	1	Tulare -----	4
Riverside -----	1	Tuolumne -----	2
San Benito -----	7		

Table XV shows the percent difference in assessed valuation (from Table XIII), the actual tax rate levied for 1968-69, the tax rate that would have been possible had it not been for the effect of having land under agreement, the tax rate reduction that might have resulted, and the actual tax rate increase or decrease in 1968-69 from 1967-68.

Twenty-eight of these districts had a difference of 5% or above. In this smaller group are six in Marin County, five in Sonoma, four in Kern, two each in El Dorado, Fresno, San Benito and San Mateo. Butte, Madera, Santa Barbara, Tulare and Tuolumne have one each.

The difference of 5% or more experienced in these districts would appear to be a severe one. In examining these districts in more detail, however, the following observations can be made:

1. Of the 27 districts, 14 increased their tax rates in 1968-69. The other 13 levied at a lower rate.
2. Only 11\* of these districts actually had a decrease in assessed valuation in 1968-69 from 1967-68.
3. Of the 11 having a decrease in assessed valuation, only six raised their tax rates above that in 1967-68.
4. Of the 14 which did increase their tax rate, 9 increased them more—sometimes substantially more—than was necessary to offset the loss in assessed valuation due to contracts or agreements.
5. In thirteen of these 27 districts, the tax rates actually levied in 1968-69 were below the statewide median tax rate for elementary districts (\$1.60).
6. Of these 27 districts, only two had an average daily attendance in 1967-68 of 1,000 or over; nine had between 100 and 999 students, and 16 had less than 100. Eight of this latter group had 25 or less students.

On the basis of the above observations, it seems clear that it is almost impossible to reach any definite conclusions as to the seriousness of the adverse impact of contracts or agreements upon school districts as a group. Careful studies will need to be made of each school district. Rural school districts where land provides the predominant part of the assessed valuation of the district appear on the surface to be most susceptible to serious effect. However, most of these districts are small in terms of number of students, continue to enjoy low tax rates in spite of the existence of contracts or agreements, and have probably

\* One of the eleven (La Honda-Pescadero) would not have had a net loss in assessed valuation except that property with assessed valuation of \$147,000 was acquired by the county and was removed from the roll.

resisted being included in unified districts which appear to be less susceptible.

While most school districts can avoid any effect upon their education program by increasing tax rates, those districts whose tax rates approach or have reached statutory tax rate limits find themselves with no other course of action than to get by on reduced revenues. Section 20751.1 of the Education Code provides that after July 1, 1961, such limitation will be removed. However, S.B. 35, now before the Legislature, seeks to repeal these provisions and continue the present restrictions.

Districts which are eligible for state school apportionments will receive an increased amount of aid from the State as a result of any reduction in assessed valuation per child. Some districts not previously eligible for state aid may conceivably become eligible for the same reason. State contributions for pupil transportation will also increase. Annual payments on state construction loans will be reduced and, to the extent that a greater unpaid balance may remain at the end of the twenty year term, some of the indebtedness will be forgiven. The effect of such increased state apportionments will tend to mitigate the impact of agreements.

In view of the foregoing, the Committee can only conclude that (1) there is an inescapable effect upon school district finances resulting from placing land under contract or agreement where the effect is to produce a lower assessed valuation upon that land than would otherwise be the case, but that (2) the extent of such effect and the possibility of serious consequences can only be determined after careful examination of all the factors involved as they relate to each individual school district.

Any adverse consequences must then be weighed against the benefits to be received from having land restricted pursuant to the Act.

TABLE XIII

**SCHOOL DISTRICTS INCLUDING LAND SUBJECT TO CONTRACT OR AGREEMENT  
PURSUANT TO CALIFORNIA LAND CONSERVATION ACT OF 1965  
(WILLIAMSON ACT)—1968-69**

Acres Under Contract or Agreement, Assessed Value of Land in District, Difference in Assessed  
Valuation Due to Effect of Contracts and Agreements, Average Difference in Assessed  
Valuation Per Acre of Land Under Contract or Agreement, Difference in  
Assessed Value as a Percent of Total Assessed Valuation of District

1 Name of District	2 Acres Under Contract or Agreement	3 Estimated A.V. of Land Without Contract or Agreement	4 Actual A.V. of Land	5 Difference (Column 3 Minus Column 4)	6 Difference Per Acre	7 Present A.V. of all Property	8 Percent Difference
<b>Alameda County</b>							
Livermore Unified.....	21,780	19,368,450	18,762,000	606,450	28	*76,199,730	0.8
Total Alameda County	21,780	-----	-----	606,450	28	2,270,631,209	0.03
<b>Butte County</b>							
Bangor Union.....	5,011	719,180	618,700	100,480	20	1,310,280	7.7
Chico Unif.....	15,720	13,325,520	13,101,970	223,550	14	86,905,830	0.3
Durham Unif.....	3,016	7,540,820	7,505,400	35,420	12	18,915,785	0.2
Golden Feather Union.....	2,969	2,147,890	2,123,040	24,850	8	23,054,870	0.1
Gridley Union.....	693	1,356,430	1,330,730	25,700	37	20,000,330	0.1
Honeat Union.....	2,240	643,530	602,380	41,150	18	1,095,780	3.8
Oroville Elem.....	2,362	2,070,610	2,033,360	37,250	16	34,238,165	0.1
Palermo Union.....	2,401	2,075,740	2,021,030	54,710	23	6,217,330	0.9
Paradise Unif.....	1,675	1,971,910	1,951,730	20,180	12	29,736,005	0.1
Thermalito Union.....	928	611,690	631,960	9,730	10	11,166,210	0.1
<sup>b</sup> Gridley UIHS.....	693	1,356,430	1,330,730	25,700	-----	23,297,130	0.1
<sup>b</sup> Oroville UHS.....	15,910	9,655,070	9,361,200	293,870	-----	83,396,460	0.3
Total Butte County.....	37,015	-----	-----	573,020	15	260,100,250	0.22
<b>Calaveras County</b>							
Calaveras Unified.....	5,800	26,470,835	26,380,835	90,000	16	52,297,350	0.17
Total Calaveras County	5,800	-----	-----	90,000	16	60,585,085	0.15
<b>El Dorado County</b>							
Buckeye.....	1,201	7,868,130	7,728,130	140,000	116	12,022,960	1.1
Camino.....	25,562	2,419,355	2,062,330	357,025	12	6,820,190	5.2
Georgetown.....	17,180	8,863,410	8,668,660	214,750	13	14,779,990	1.4
Gold Oak.....	1,114	2,224,020	2,168,320	55,700	50	3,848,130	1.5
Gold Trail.....	2,810	2,114,780	1,974,280	140,500	50	3,660,880	3.9
Latrobe.....	4,101	833,590	731,370	102,520	25	1,461,690	7.0
Mother Lode.....	1,181	3,902,570	3,873,070	29,500	25	8,281,080	0.3
Northside.....	2,783	2,245,170	2,106,020	139,150	50	2,969,040	4.7
Pioneer.....	1,996	2,695,170	2,645,270	49,900	25	4,617,620	1.1
Placerville.....	189	4,737,475	4,713,850	23,625	125	16,818,115	0.1
Pollock Pines.....	8,622	3,272,315	3,164,570	107,775	13	8,394,760	1.3
Rescue.....	1,472	5,667,130	5,520,930	146,200	100	7,881,250	1.9
Silver Fork.....	20,807	1,396,897	1,317,880	79,017	4	3,615,490	2.2
<sup>b</sup> El Dorado High School.....	92,008	46,443,822	44,875,160	1,568,662	17	92,945,335	1.7
Total El Dorado County	94,365	-----	-----	1,585,652	17	178,791,455	0.89
<b>Fresno County</b>							
American Union Elem.....	423	3,758,112	3,743,721	14,391	34	6,879,195	0.20
Auberry Union Elem.....	15,955	2,576,770	2,251,555	325,215	20	7,676,422	4.20
Burrel Union Elem.....	1,314	3,332,264	3,307,604	24,660	19	5,231,885	0.40
Cantua-Elem.....	302	4,461,132	4,451,580	9,552	32	9,811,555	0.10
Caruthers Union Elem.....	438	3,403,123	3,400,734	2,394	6	7,197,766	0.03
Clovis Union Unif.....	30,370	17,670,463	16,705,641	964,822	32	48,949,170	2.00
Coalinga.....							
Fresno Co.....	318	49,120,516	49,109,597	10,919	34	-----	-----
Monterey Co.....	2,930	142,560	139,860	2,700	1	-----	-----
San Benito Co.....	450	42,990	42,320	670	1	-----	-----
Total.....	3,728	49,306,066	49,291,777	14,289	4	*81,797,727	0.02

TABLE XIII—Continued

1	2	3	4	5	6	7	8
Name of District	Acres Under Contract or Agreement	Estimated A.V. of Land Without Contract or Agreement	Actual A.V. of Land	Difference (Column 3 Minus Column 4)	Difference Per Acre	Present A.V. of all Property	Percent Difference
<b>Fresno County—Continued</b>							
Cutler-Orosi Union.....	See Tulare	County					
Firebaugh.....							
Fresno Co.....	299	4,619,040	4,599,919	19,121	64	-----	-----
Madera Co.....	5,288	3,099,910	3,048,410	51,500	10	-----	-----
<b>Total.....</b>	<b>5,587</b>	<b>7,718,950</b>	<b>7,648,329</b>	<b>70,621</b>	<b>13</b>	<b>\$13,949,157</b>	<b>0.5</b>
Houghton-Kearney Union—							
Elem.....	694	3,198,276	3,145,654	52,622	76	5,072,846	1.00
Friant Union Elem.....	5,306	988,057	815,326	172,731	33	1,457,068	11.90
Fowler Union Unif.....	136	6,929,502	6,860,805	68,697	505	24,963,412	0.30
Kings Canyon Union—Unif.....	31,908	13,984,160	13,448,075	536,085	17	\$46,339,420	1.20
Kingsburg Joint Union—							
Elem.....	21	2,706,918	2,705,277	1,641	80	\$21,857,440	Neg.
Laton Union Unif.....	139	2,954,569	2,952,276	2,293	17	6,708,165	0.03
Madison—Elem.....	97	1,705,826	1,696,360	9,466	97	4,985,581	0.20
McKinley Roosevelt Union							
—Elem.....	297	3,450,990	3,425,024	25,966	87	7,971,646	0.30
Mendota Union—Elem.....	2,022	9,025,167	8,926,073	99,094	49	22,953,799	0.40
Monroe—Elem.....	65	905,098	900,636	4,462	69	6,305,538	0.07
Orange Center Elem.....	198	1,075,539	970,632	104,907	530	2,116,732	5.00
Oro Loma Elem.....	6,243	8,020,688	8,011,358	9,330	2	12,304,173	0.08
Pacific Union Elem.....	109	2,106,991	2,102,444	4,547	42	4,698,433	0.10
Pine Ridge Elem.....	196	1,866,354	1,844,387	21,967	112	5,320,455	0.40
Raisin City Elem.....	867	2,444,439	2,441,049	3,390	4	4,312,718	0.08
Sanger Union Unif.....	17,699	15,514,553	14,965,598	548,955	31	45,740,848	1.20
Selma Union Unif.....	158	6,494,940	6,487,977	6,963	44	25,772,429	0.03
Sierra Union Elem.....	28,470	2,614,036	2,202,654	411,382	15	25,086,890	1.60
Sun Empire Union—Elem.....	108	6,307,872	6,304,262	3,610	34	10,536,683	0.03
Tranquility Elem.....	1,027	4,116,298	4,091,705	24,593	24	6,571,678	0.40
Westside Elem.....	1,578	5,315,612	5,251,890	63,722	40	12,277,419	0.50
<b>Total Fresno County.....</b>	<b>147,680</b>			<b>3,563,927</b>	<b>24</b>	<b>979,623,914</b>	<b>0.36</b>
<b>Kern County</b>							
Arvin.....	83,549	1,450,370	267,130	1,183,240	14	25,305,840	4.7
Bakersfield.....	16,588	127,210	47,800	79,410	5	181,045,860	Neg.
Beardsley.....	280	5,100	640	4,460	16	19,785,680	Neg.
Belridge.....	40	1,800	80	1,720	43	27,976,610	Neg.
Blake.....	44,212	670,270	299,210	371,060	8	1,424,620	26.4
Buttonwillow.....	3,201	218,270	110,460	107,810	34	21,374,940	0.5
Caliente.....	100,661	681,120	404,620	276,500	3	2,170,760	12.8
Delano.....	28,318	534,910	234,400	300,510	11	32,513,880	0.9
DiGiorgio.....	7,426	137,910	35,560	102,350	14	7,177,790	1.4
Edison.....	6,159	138,260	105,570	32,690	5	11,271,500	0.3
El Tejon.....	16,882	346,260	39,980	306,280	18	24,340,730	1.3
Fruitvale.....	141	31,020	20,060	10,960	78	25,552,820	Neg.
Greenfield.....	538	97,250	71,170	26,080	48	16,517,820	0.1
Lakeside.....	22,148	2,294,820	1,411,460	883,360	40	27,176,080	3.3
Lamont.....	39	5,660	5,450	210	5	10,689,500	Neg.
Linns Valley-Poso Flat.....	73,653	866,830	364,030	502,800	7	3,090,430	16.3
Lost Hills.....	16,756	374,590	95,200	279,390	17	21,575,870	1.3
Maple.....	355	52,900	44,200	8,700	25	4,927,120	0.2
Maricopa.....	25,100	295,270	129,510	165,760	7	15,472,170	1.6
McFarland.....	3,561	80,870	35,110	45,760	13	20,214,480	0.2
Midway.....	479	3,220	960	2,260	5	41,500,930	Neg.
Mojave.....	120	3,490	410	3,080	26	37,860,100	Neg.
Panama.....	857	397,720	115,640	282,080	329	31,055,860	0.9
Pond.....	8,412	1,113,630	700,520	413,110	49	8,560,490	4.9
Richland.....	39	9,630	7,170	2,460	63	21,301,820	Neg.
Rio Bravo.....	634	61,300	33,600	27,700	44	15,984,380	0.2
Semi Tropic.....	8,265	1,072,510	640,120	432,390	52	8,248,630	5.2
So. Kern.....	28,556	521,990	66,160	455,830	16	14,373,560	3.2
So. Fork.....	1,639	71,470	19,730	51,740	32	3,588,470	1.5
Standard.....	468	5,750	2,630	3,120	7	52,152,810	Neg.
Taft.....	7,053	635,430	378,390	257,040	36	36,172,120	0.7
Tehachapi.....	104,104	1,137,980	276,910	861,070	8	23,409,240	3.6
Vineland.....	636	80,760	56,320	24,440	38	5,985,160	0.4
Wasco.....	3,459	646,860	407,330	239,530	69	26,686,680	0.9
<b>Total Kern County.....</b>	<b>625,914</b>			<b>7,744,900</b>	<b>12</b>	<b>999,054,260</b>	<b>0.8</b>



TABLE XIII—Continued

1	2	3	4	5	6	7	8
Name of District	Acres Under Contract or Agreement	Estimated A.V. of Land Without Contract or Agreement	Actual A.V. of Land	Difference (Column 3) Minus Column 4)	Difference Per Acre	Present A.V. of all Property	Percent Difference
<b>Madera County</b>							
Spring Valley.....	40,467	3,644,500	3,441,580	202,920	5	4,860,860	4.2
Madera Unif.....	35,905	24,431,180	23,944,930	486,250	14	72,021,090	0.7
North Fork.....	1,938	1,574,240	1,562,240	12,000	6	23,025,705	0.1
Wasuma.....	3,375	975,430	962,090	13,340	4	1,695,605	0.8
Chowchilla Unified.....	1,072	3,119,360	3,113,050	6,310	6	12,596,530	Neg.
Firebaugh.....	Sec Fresno	County					
Alview.....	156		3,064,530	870	6	4,635,180	Neg.
Dairyland.....	122		3,656,260	(210)	(2)	6,504,210	Neg.
Raymond.....	39,552		2,588,930	2,344,210	6	3,092,605	7.9
Oakhurst.....	377		3,291,570	6,710	18	6,492,530	0.1
Coarsegold.....	6,532		2,086,560	2,043,690	6	2,619,320	1.6
Total Madera County.....	134,684			1,067,280	9	149,002,350	0.72
<b>Marin County</b>							
Bolinas-Stinson.....	794	7,138,837	7,075,760	63,077	77	10,624,502	.59
Dixie.....	605	18,251,810	17,594,086	657,754	1,088	47,682,899	1.38
Laguna Joint.....	6,992	1,113,310	905,816	207,494	30	11,567,783	13.23
Lincoln.....	14,514	1,372,023	910,759	461,264	32	1,467,552	31.43
Mill Valley.....	962	28,699,370	28,526,024	173,346	180	66,887,533	.26
Nicasio.....	6,354	2,243,258	1,902,974	340,284	54	2,628,949	12.94
Tomales Bay.....							
Marin.....	19,792	4,546,926	3,750,805	796,121	40		
Sonoma.....	2,258	187,520	186,320	1,200	1		
Total.....	22,050	4,734,446	3,937,125	797,321	36	19,930,944	---
Union Joint.....	2,041	292,351	217,601	74,750	37	1,671,142	11.14
West Marin Unif.....	22,237	9,962,332	7,821,983	2,140,349	96	12,339,756	17.35
Novato Unif.....	4,077	33,815,532	33,337,362	478,170	117	75,542,481	.63
San Rafael Hi <sup>b</sup> .....	605	68,237,206	67,579,452	657,754	1,088	166,120,298	.40
Tamalpais UHS <sup>b</sup> .....	8,110	133,478,817	132,902,110	566,707	71	298,779,675	.19
Tomales UHS <sup>b</sup> .....	42,029	14,509,258	11,572,788	2,936,470	70	23,032,760	12.74
Marin J.C. «.....	54,821	250,040,813	245,391,712	4,649,101	85	558,746,244	.81
Total Marin County.....	78,399			5,392,609	69	562,028,188	0.96
<b>Mendocino County</b>							
Ukiah Unif.....	6,974	18,112,540	17,853,010	259,530	37	56,858,320	0.46
Arena Unif.....	765	4,464,850	4,404,850	60,000	78	6,091,800	0.98
Total Mendocino County.....	7,739			319,530	41	128,564,130	0.25
<b>Monterey County</b>							
Alisal.....	15,575	2,934,320	2,887,870	46,450	3	16,119,861	0.30
Bradley.....	2,203	1,758,755	1,758,755	---	---	3,148,145	---
Chualar.....	9,748	5,238,165	5,219,450	18,715	2	7,543,765	0.25
Coalinga.....	See Fresno	County					
Gonzales.....	6,780		4,925,100	41,830	6	11,281,920	0.37
Graves.....	161		1,309,060	---	---	1,936,245	---
Greenfield.....	9,711		5,947,295	5,725	1	10,634,080	0.05
King City.....	43,072		8,713,380	8,354,835	8	21,697,105	1.65
Mission.....	2,594		1,910,215	1,906,915	1	2,469,795	0.15
North Monterey County.....	1,741	7,952,292	7,952,292	---	---	80,297,217	---
San Ardo.....	15,792	6,504,870	6,504,870	---	---	15,820,790	---
San Lucas.....	40,470	1,986,360	1,871,620	114,740	3	3,584,150	0.41
Santa Rita.....	4,135	4,011,565	3,936,020	75,545	18	10,638,735	0.71
Soledad.....	11,323	6,769,890	6,749,060	20,830	2	14,052,565	0.15
Spreckels.....	1,402	8,122,225	8,122,055	170	Neg.	26,183,365	Neg.
Washington.....	2,124	4,223,300	4,194,275	29,025	14	8,631,885	0.34
Carmel Unif.....	12,237	22,601,580	22,550,480	51,100	4	88,049,461	0.06
Monterey Peninsula Unif.....	164	8,013,775	7,964,095	49,680	303	110,259,165	0.05
Total Monterey County.....	182,162			818,405	5	596,963,774	0.14
<b>Placer County</b>							
Ackerman.....	155	1,169,380	1,123,100	46,280	299	3,435,094	1.3
Alta-Dutch Flat.....	50	907,000	902,200	4,800	96	10,195,800	Neg.
Anburn.....	779	4,384,900	4,226,100	158,800	204	31,164,523	0.5
Colfax.....	320	1,420,100	1,420,100	---	---	5,531,608	---



TABLE XIII—Continued

1	2	3	4	5	6	7	8
Name of District	Acres Under Contract or Agreement	Estimated A.V. of Land Without Contract or Agreement	Actual A.V. of Land	Difference (Column 3 Minus Column 4)	Difference Per Acre	Present A.V. of all Property	Percent Difference
<b>Placer County—Continued</b>							
Forest Hill.....	257	2,303,360	2,279,000	24,360	95	5,456,183	0.4
Loomis.....	43	5,885,760	5,872,000	13,760	320	13,746,364	0.1
Penryn.....	928	1,040,340	878,800	161,540	174	2,416,184	6.7
Placer Hills.....	1,053	4,847,120	4,676,300	170,820	162	12,599,687	1.4
Center.....	656	933,800	856,900	76,900	118	3,013,576	2.5
Western Placer Unif.....	13,032	8,146,670	6,616,200	1,536,470	118	19,516,398	7.9
Total Placer County.....	17,273			2,193,790	127	225,246,520	1.0
<b>Riverside County</b>							
Corona Unif.....	1,240	45,737,190	45,373,340	363,850	294	110,295,886	0.33
Jurupa Unif.....	1,079	20,857,220	20,238,850	618,370	573	57,750,750	1.07
Hemet Unif.....	1,027	35,610,390	35,610,390			77,996,520	
Total Riverside County.....	3,346			982,220	323	1,120,431,850	0.10
<b>San Benito County</b>							
Bitterwater.....	75,199	1,424,510	1,234,660	189,850	3	1,942,690	9.80
Cienega.....	12,782	958,150	923,830	34,320	3	2,555,710	1.30
Coalinga.....	Sec Fresno County						
Hollister.....		4,723,100	4,701,500	21,600	10	24,803,540	0.09
Jefferson.....		955,550	882,920	72,630	3	1,330,250	5.46
North County							
San Benito County.....	14,479	6,649,440	6,521,590	127,850	9	11,796,370	
Santa Clara County.....	11,299	1,099,310	1,025,280	74,030	7	1,441,440	
Total.....	25,778	7,748,750	7,546,870	201,880	8	13,237,810	1.50
Panoche.....	34,538	1,837,130	1,755,450	81,680	2	3,731,620	2.19
San Juan.....	2,600	4,990,420	4,966,170	24,250	9	10,028,170	0.24
Santa Ana.....	5,230	823,190	717,310	105,880	21		
Tres Pinos.....	40,417	2,255,820	2,000,960	254,860	6	5,191,790	4.91
Willow-Grove.....	25,772	2,334,680	2,220,050	114,630	4	5,864,970	1.95
Total San Benito County.....	242,385			1,027,550	4	72,159,460	1.42
<b>San Bernardino County</b>							
Chino Unif.....	820	14,503,750	13,526,120	977,630	1,192	70,183,550	1.39
Mt. View Elem.....	1,807	5,003,540	4,700,140	303,400	168	9,034,450	3.36
Chaffey Union High School <sup>b</sup> .....	1,807	5,003,540	4,700,140	303,400	168	302,203,720	0.10
Total San Bernardino County.....	2,627			1,281,030	488	1,496,266,800	0.09
<b>San Mateo County</b>							
Calbrillo.....	14,084			1,481,305	105	28,728,260	5.15
La Honda.....	19,659			1,364,825	70	9,822,925	13.80
Redwood City.....	51			133,828	2,607	222,356,028	0.06
Portola Valley.....	881			54,786	62	23,932,000	0.24
Ravenswood.....	45			142,870	3,163	57,200,727	0.25
Total San Mateo County.....	34,720			3,177,614	92	1,664,133,291	0.19
<b>Santa Barbara County</b>							
Lompoc Unif.....	759			4,250	6	64,320,165	0.01
Buellton Union Elem.....	5,014			110,480	22	6,639,920	1.67
Los Olivos Elem.....	6,084			198,110	31	4,507,890	4.39
College Elem.....	7,257			229,950	32	14,048,760	1.64
Blochman Union Elem.....	723			5,450	8	8,810,660	0.06
Los Alamos Elem.....	6,373			374,450	59	4,676,550	8.00
Goleta Union Elem.....	2,770			384,000	138	108,417,081	0.35
Santa Ynez Jt. U.H.S. <sup>b</sup> .....	18,355			538,530	29	54,505,700	0.99
Santa Maria Jt. U.H.S. <sup>b</sup> .....	7,096			379,900	54	144,293,772	0.26
Santa Barbara H.S. <sup>b</sup> .....	2,770			384,000	138	349,626,314	0.11
Total Santa Barbara County.....	28,980			1,306,680	45	649,377,743	0.20

TABLE XIII—Continued

1	2	3	4	5	6	7	8
Name of District	Acres Under Contract or Agreement	Estimated A.V. of Land Without Contract or Agreement	Actual A.V. of Land	Difference (Column 3) Minus Column 4)	Difference Per Acre	Present A.V. of all Property	Percent Difference
<b>Santa Clara County</b>							
Air Point.....	23,872	1,451,008	1,403,380	47,628	2	2,419,540	2.0
Alum Rock.....	2,387	10,542,515	10,495,580	46,935	20	77,001,360	0.1
North County.....	See	San Benito County					
Cupertino.....	205	12,875,838	12,563,810	312,028	1,522	202,189,020	0.2
Evergreen.....	1,812	4,410,509	4,401,930	8,570	5	23,738,130	Neg.
Gilroy Unif.....	53,364	14,312,028	13,873,000	439,028	8	46,938,370	0.9
Patterson.....	22,954	523,327	494,010	29,317	1	26,712,130	0.1
Santa Clara Unifed.....	27	7,692,303	7,683,810	8,493	327	201,285,930	Neg.
Montebello.....	183	613,502	635,050	8,452	46	1,200,520	0.7
Morgan Hill.....	30,936	13,944,349	13,846,630	97,719	3	46,372,830	0.2
Total Santa Clara County.....	147,038			1,072,209	7	2,432,737,380	Neg.
<b>Santa Cruz County</b>							
Pajaro Valley Unifed.....	1,750	37,032,020	37,167,320	(135,300)	(77)	117,419,275	(0.11)
Total Santa Cruz County.....	1,750			(135,300)	(77)	306,342,210	(0.04)
<b>Solano County</b>							
Dixon Unif.....	712			None		33,906,865	
Fairfield-Suisun Unif.....	2,584			None		63,179,015	
Total Solano County.....	3,296			None		331,629,585	
<b>Sonoma County</b>							
Alexander Valley Union.....	440	1,575,310	1,486,870	88,440	201	2,990,290	3.0
Bloomfield Jt. Union.....	1,955	804,910	791,310	13,600	7		
Bellevue Union.....	632	8,436,140	7,793,750	642,390	1,617	18,200,285	3.5
Cloverdale Unifed.....	2,536	3,004,950	2,946,070	58,880	23	17,498,490	0.3
Cotati.....	158	1,716,610	1,529,410	187,200	1,186	11,570,715	1.6
Dunham.....	161	647,260	559,140	88,120	548	1,185,440	7.4
Forestville.....	734	2,442,660	2,325,940	116,720	159	7,418,365	1.6
Fort Ross.....	4,809	1,215,575	1,097,655	117,920	24	1,831,280	6.4
Geyserville Unifed.....	639	2,179,720	2,175,240	4,480	7	4,993,735	0.1
Gravenstein Union.....	98	2,203,640	2,140,440	63,200	645	6,262,160	1.0
Harmony Union.....	1,508	2,567,250	2,517,050	50,200	33	5,422,890	0.9
Healdsburg Union.....	3,593	3,306,150	3,190,770	115,680	32	19,316,080	0.6
Horicon Seb.....	7,780	2,667,245	2,543,645	123,600	16	3,620,825	3.4
Liberty.....	778	1,501,230	1,235,510	265,720	341	2,708,580	9.8
Mark West Union.....	265	5,314,180	5,222,980	91,200	344	14,099,570	0.6
Montgomery.....	272	949,685	933,325	16,360	60	1,812,265	0.9
Oak Grove Union.....	560	3,048,730	2,824,930	223,800	400	7,415,355	3.0
Old Adobe Union.....	6,631	6,102,420	4,845,540	1,256,880	190	14,151,225	8.9
Petaluma City.....	1,679	5,220,050	4,305,930	914,120	545	40,667,565	2.2
Piner-Olivet Union.....	987	3,691,890	3,211,570	480,320	488	6,962,640	6.9
Rincon Valley Union.....	974	3,365,120	3,072,760	292,360	300	39,407,510	0.7
Bennett Valley Union.....	494	2,970,860	2,725,860	245,000	500	7,397,500	3.3
Sonoma Valley Unifed.....	5,476	11,841,635	11,725,395	116,240	21	41,134,430	0.3
Twin Hills Union.....	377	2,319,780	2,274,100	45,680	121	5,209,920	1.7
Two Rock Union.....	844	1,472,320	1,397,680	74,640	89	2,669,590	2.8
Watson Joint Union.....	See	Marin County					
Wauha.....	130	1,236,080	1,189,280	46,800	320	2,032,170	2.3
West Side Union.....	1,353	1,601,725	1,533,525	68,200	50	3,053,520	2.2
Wilmor Union.....	767	2,231,510	2,082,910	148,600	194	4,751,815	3.1
Windsor Union.....	642	4,680,180	4,535,380	144,800	226	8,358,230	1.8
Calistoga Joint Unifed.....	378	584,960	580,480	4,480	12	9,511,690	0.1
Total Sonoma County.....	47,908			6,106,830	127	446,409,927	1.4
<b>Tehama County</b>							
Antelope.....	2,950	180,490	89,070	91,420	31	5,896,685	1.6
Corning.....	2,217	33,680	18,800	14,880	7	13,971,705	0.1
Elkins.....	1,727	10,610	4,010	6,600	4	2,350,120	0.3
Evergreen.....	30	750	110	640	21	5,341,755	Neg.
Flournoy.....	2,434	30,450	17,430	13,020	5	1,553,470	0.8
Gerber.....	256	2,800	1,040	1,760	7	4,708,410	Neg.
Kirkwood.....	50	2,170	700	1,470	29	1,147,340	0.1
Lassen View.....	15,549	125,130	64,090	61,040	4	6,257,060	1.0
Red Bluff.....	7,038	108,300	50,960	57,340	8	28,250,285	0.2

TABLE XIII—Continued

1	2	3	4	5	6	7	8
Name of District	Acres Under Contract or Agreement	Estimated A.V. of Land Without Contract or Agreement	Actual A.V. of Land	Difference (Column 3 Minus Column 4)	Difference Per Acre	Present A.V. of all Property	Percent Difference
<b>Tehama County—Continued</b>							
Reeds Creek.....	6,987	55,230	29,070	26,160	4	2,694,710	1.0
Richfield.....	195	21,540	15,870	5,670	29	2,368,990	0.2
Los Molinos Unif.....	8,206	32,930	19,120	13,810	2	7,964,795	0.2
<b>Tehama County Total..</b>	<b>47,639</b>			<b>293,810</b>	<b>6</b>	<b>91,330,645</b>	<b>0.32</b>
<b>Tulare County</b>							
Exeter.....	8,723	6,502,245	6,393,295	108,950	12	19,704,798	0.5
Lindsay.....	309	6,861,540	6,794,230	67,310	218	24,894,159	0.3
Porterville.....	1,547	10,392,490	10,351,490	41,000	27	38,932,141	0.1
Tulare.....		9,701,760	9,695,520	6,240		36,199,955	Neg.
Visalia Unif.....	5,334	34,248,830	33,664,290	584,540	110	107,930,472	0.5
Woodlake.....	6,283	5,088,230	4,992,740	95,490	15	13,594,440	0.7
Three Rivers.....	1,956	4,935,570	4,211,320	724,250	370	7,929,800	9.1
Alpaugh.....	590	3,174,435	3,172,355	2,080	4	4,245,853	Neg.
Delta View.....	220	1,138,720	1,120,970	17,750	81	4,628,660	0.4
Ducor.....	27,362	5,673,230	5,415,800	257,430	9	10,529,707	2.2
Earlsmart.....		5,665,870	5,664,370	21,500		12,979,380	0.2
Hope.....	124	1,079,155	1,071,865	7,290	59	2,674,390	0.3
Hot Springs.....	1,875	1,625,535	1,597,665	27,870	15	5,754,170	0.5
Kings River.....	160	1,490,570	1,472,160	18,410	115	3,329,535	0.6
Liberty.....	339	1,794,760	1,757,950	36,810	109	4,189,275	0.9
Outside Creek.....	184	1,469,710	1,449,510	20,200	110	2,539,580	0.8
Paloverde.....	97	3,631,120	3,624,880	6,240	64	6,797,675	0.1
Pixley.....	80	4,219,455	4,214,505	4,950	62	8,210,197	0.1
Pleasant View.....	600	2,265,120	2,210,670	54,450	98	4,004,763	1.3
Sequoia Union.....	6,591	2,505,680	2,444,370	61,310	9	6,974,600	0.9
Springville.....	5,262	4,205,930	4,132,010	73,920	14	8,797,710	0.8
Strathmore.....	10,079	3,858,540	3,755,640	102,900	10	11,404,350	0.9
Sunnyside.....	1,634	4,223,420	4,038,680	184,740	113	7,802,990	2.4
Sundale.....	161	3,092,710	3,072,910	19,800	123	6,686,305	0.3
Tipton.....	560	3,890,110	3,863,340	26,770	48	8,050,185	0.3
Traver.....	379	3,209,905	3,203,055	6,850	18	5,091,410	0.1
Woodville.....		2,209,810	2,201,060	8,750		4,171,002	0.2
Monson-Sultana.....	100	1,923,510	1,911,620	11,890	119	4,757,192	0.3
Cutler-Orosi.....	3,945	5,590,635	5,514,125	76,510	19	16,608,441	0.4
<b>Tulare County Total..</b>	<b>92,951</b>			<b>2,676,200</b>	<b>29</b>	<b>485,459,212</b>	<b>0.55</b>
<b>Tuolumne County</b>							
Bellevue.....	55	4,790	3,140	1,650	30	1,413,200	0.12
Groveland.....	8,161	90,790	40,960	49,830	6	5,522,065	0.90
Chinese Camp.....	8,117	108,430	73,110	35,320	4	1,103,920	3.20
Curtis Creek.....	430	6,810	4,160	2,650	6	7,237,315	0.04
Jamestown.....	20,723	302,280	278,520	23,760	1	4,466,705	0.53
Sonora.....	3,748	65,450	35,070	30,380	8	12,753,250	0.24
Soulsbyville.....	582	16,720	3,120	13,600	23	3,086,530	0.44
Wards Ferry.....	3,989	63,480	38,610	24,870	6	264,860	9.39
Columbia.....	1,386	65,720	18,120	47,600	34	14,800,255	0.32
Summersville.....	1,528	41,990	17,740	24,250	16	4,744,375	0.51
Twaine Harte.....	780	16,330	3,120	13,210	17	10,949,290	0.12
<b>Total Tuolumne County</b>	<b>49,499</b>			<b>267,120</b>	<b>5</b>	<b>66,646,395</b>	<b>0.40</b>

<sup>a</sup> Includes A.V. of District in Contra Costa County.

<sup>b</sup> High School Districts not included in total.

<sup>c</sup> Includes District A.V. in Monterey and San Benito Counties.

<sup>d</sup> Includes District A.V. in Madera County.

<sup>e</sup> Includes District A.V. in Tulare County.

<sup>f</sup> Includes District A.V. in Tulare and Kings Counties.

<sup>g</sup> Junior College Districts Not Included in County Total.

<sup>h</sup> Includes District A.V. in Sonoma County.

<sup>i</sup> Includes District A.V. in Sacramento County.

<sup>j</sup> Includes A.V. of District in Stanislaus County.

<sup>k</sup> Includes District A.V. in Monterey and San Benito Counties.

<sup>l</sup> Includes District A.V. in Napa County.

<sup>m</sup> Includes District A.V. in Fresno County.

<sup>n</sup> Includes District A.V. in Kings County.

TABLE XIV  
SCHOOL DISTRICTS INCLUDING LAND SUBJECT TO CONTRACTS OR AGREEMENTS PURSUANT TO CALIFORNIA LAND CONSERVATION ACT  
OF 1965 (WILLIAMSON ACT)  
Assessed Valuation and Tax Rates for 1966-67, 1967-68 and 1968-69

Name of District	Type	Average Daily Attendance			Assessed Valuation Per Unit of Average Daily Attendance		Assessed Valuation				Tax Rates		
		68/69	67/68	66/67	67/68	66/67	68/69	67/68	66/67	68/69	67/68	66/67	
		68/69	67/68	66/67	67/68	66/67	68/69	67/68	66/67	68/69	67/68	66/67	
Alameda County													
Livermore.....	Unif.	11,239	10,394	9,471	8,514	7,924	*76,199,730	*62,870,884	*53,162,179	5.798	5.149	5.206	
Butte County													
Bangor.....	Elem.	---	87	90	11,092	10,417	1,310,280	953,910	937,570	2.1800	2.2170	2.3360	
Chico.....	Unif.	---	9,446	9,626	12,759	15,208	86,905,830	84,811,905	77,710,889	5.1760	4.9160	5.4220	
Durham.....	Unif.	---	837	795	34,306	30,053	18,915,785	19,040,035	16,348,620	2.8930	3.0340	2.6980	
Golden Feather.....	Elem.	---	131	117	191,928	198,647	23,054,870	23,990,990	23,229,960	1.7800	1.8810	1.6600	
Gridley.....	Elem.	---	1,404	1,389	13,943	12,005	20,000,330	19,520,855	16,638,765	1.9780	1.9540	2.0310	
Honcut.....	Elem.	---	74	58	11,980	15,484	1,095,780	862,580	898,100	1.6390	1.5940	1.5970	
Oroville.....	Elem.	---	2,871	2,927	11,143	10,977	34,238,165	31,970,660	32,075,755	2.4100	2.3040	2.5320	
Palermo.....	Elem.	---	948	948	5,496	5,849	6,217,330	5,567,630	5,656,010	2.6120	2.8150	2.5490	
Paradise.....	Unif.	---	2,499	2,487	17,703	15,602	29,736,005	29,351,720	25,857,395	3.8810	3.9900	3.8960	
Thermalito.....	Elem.	---	1,240	1,323	8,876	7,365	11,166,210	11,033,420	9,733,625	2.4420	2.5840	2.6420	
Gridley.....	H.S.	---	647	647	34,792	31,447	23,297,130	22,788,635	19,591,205	1.7320	1.5360	1.5310	
Oroville.....	H.S.	---	2,111	2,244	38,678	35,901	83,396,460	82,345,925	78,191,660	1.5750	1.5390	1.5880	
Calaveras County													
Calaveras.....	Unif.	2,210	2,061	1,884	32,197	30,228	52,297,350	44,149,975	37,688,395	3.04	2.92	2.87	
El Dorado County													
Buckeye.....	Elem.	---	685	659	16,006	14,448	12,022,960	10,963,970	9,521,490	2.2270	2.243	2.275	
Camino.....	Elem.	---	373	361	17,816	18,002	6,820,190	6,645,460	6,498,840	2.1200	2.019	1.965	
Georgetown Divide.....	Elem.	---	269	274	50,893	45,729	14,779,990	13,690,990	12,529,610	2.1430	2.199	2.062	
Gold Oak.....	Elem.	---	390	391	9,640	8,817	3,898,130	3,795,790	3,447,400	2.0760	2.001	1.991	
Gold Trail.....	Elem.	---	331	319	10,558	9,746	3,660,880	3,491,730	3,108,980	2.0290	2.008	1.978	
Latrobe.....	Elem.	---	25	32	59,237	41,729	1,461,690	1,480,930	1,335,330	1.2050	1.225	1.259	
Mother Lode.....	Elem.	---	914	900	8,786	8,658	8,281,280	8,030,260	7,792,320	2.3650	2.365	2.314	
Northside.....	Elem.	---	116	92	19,301	22,978	2,969,040	2,235,860	2,113,950	2.0250	1.847	1.589	
Pioneer.....	Elem.	---	117	130	33,279	25,609	4,617,620	3,893,670	3,329,190	2.2310	2.025	1.569	
Placerville.....	Elem.	---	1,287	1,313	13,300	12,211	16,818,115	17,117,240	16,032,506	2.2760	2.311	2.248	

\* Includes District Assessed Valuation in Contra Costa County.



**TABLE XIV—Continued**  
**SCHOOL DISTRICTS INCLUDING LAND SUBJECT TO CONTRACTS OR AGREEMENTS PURSUANT TO CALIFORNIA LAND CONSERVATION ACT**  
**OF 1965 (WILLIAMSON ACT)**  
**Assessed Valuation and Tax Rates for 1966-67, 1967-68 and 1968-69**

Name of District	Type	Average Daily Attendance			Assessed Valuation Per Unit of Average Daily Attendance		Assessed Valuation				Tax Rates		
		68/69	67/68	66/67	67/68	66/67	68/69	67/68	66/67	68/69	67/68	66/67	
El Dorado County—Continued													
Pollock Pines.....	Elem.	-----	465	534	17,630	14,423	8,394,760	8,107,750	7,701,750	2,7430	2,753	2,772	
Rescue.....	Elem.	-----	387	369	13,988	13,988	7,881,560	6,086,670	5,161,720	2,0900	2,326	1,727	
Silver Fork.....	Elem.	-----	28	26	118,582	113,085	3,615,490	3,320,300	2,610,920	1,2250	1,351	1,974	
El Dorado.....	H.S.	-----	2,192	2,170	39,886	37,046	92,945,335	87,356,820	80,390,070	1,4550	1,470	1,431	
Fresno County													
American.....	Elem.	435	425	417	16,828	16,366	6,879,105	6,707,420	6,420,710	2,0674	2,0540	1,9870	
Auberry.....	Elem.	271	271	256	31,884	32,797	7,676,422	8,148,029	8,098,290	2,3860	2,0980	2,0390	
Burrell.....	Elem.	88	88	93	66,957	59,045	5,231,885	5,416,502	5,248,870	1,2696	1,5100	1,5070	
Cantua.....	Elem.	449	449	404	24,084	23,481	9,811,585	10,005,190	8,853,470	2,9436	2,8730	2,8270	
Caruthers.....	Elem.	602	602	626	12,589	11,531	7,197,766	7,063,921	6,960,460	2,1566	2,2550	2,2080	
Clovis.....	Unif.	8,149	8,149	7,664	8,715	7,956	48,949,170	48,094,562	41,469,060	4,2788	4,1230	3,5638	
Coalinga.....	Unif.	2,881	2,881	2,942	44,026	47,463	981,797,762	988,067,825	996,127,485	2,1720	2,0280	1,9030	
Cutler-Orosi.....	See Tulare County												
Firebaugh.....	Elem.	1,116	1,116	1,088	12,715	12,799	6,139,949,157	6,139,949,157	6,139,949,157	2,5008	2,7780	2,9730	
Houghton-Kearney.....	Elem.	228	228	240	22,911	21,105	5,072,846	4,891,533	4,773,090	1,9496	1,9380	1,9450	
Front.....	Elem.	59	59	51	28,656	25,754	1,457,068	1,588,810	1,201,600	1,8942	1,7700	1,7400	
Fowler.....	Unif.	2,013	2,013	2,041	17,141	12,867	24,963,412	25,285,521	18,331,400	4,0299	3,8833	4,1714	
Kings Canyon.....	Unif.	5,440	5,440	5,390	12,253	10,907	446,339,420	444,697,338	411,047,310	3,7949	3,7648	3,7970	
Kingsburg.....	Elem.	1,317	1,317	1,275	17,548	18,859	921,867,440	921,428,040	920,088,320	1,8148	2,0071	1,7410	
Laton.....	Unif.	821	821	836	12,343	12,596	6,708,165	6,700,963	6,640,290	4,2649	4,0828	3,8082	
Madison.....	Elem.	784	784	769	6,723	6,321	4,985,581	4,792,870	4,583,830	2,0878	2,0997	2,0410	
McKinley-Roosevelt.....	Elem.	1,389	1,389	1,440	5,927	5,150	7,971,646	7,762,552	6,914,150	2,4052	2,3590	2,3520	
Mendota.....	Elem.	1,379	1,379	1,383	18,470	17,315	22,953,799	23,220,737	22,491,080	2,4850	2,5038	2,3760	
Monroe.....	Elem.	183	183	173	26,245	27,374	6,305,538	6,548,407	4,379,180	1,2038	1,3490	1,3830	
Orange Center.....	Elem.	518	518	501	4,626	4,407	2,116,732	2,256,911	2,126,660	2,1640	2,1580	2,1910	
Oro Loma.....	Elem.	333	333	313	39,539	37,179	12,304,173	12,317,107	10,831,650	2,1853	2,1414	2,2230	
Pacific.....	Elem.	553	553	515	9,205	10,233	4,698,433	4,755,252	4,553,220	2,2988	2,5470	1,7640	
Pine Ridge.....	Elem.	13	13	13	416,257	403,996	5,320,455	5,227,571	5,111,580	1,9234	1,9990	1,8380	
Raisin City.....	Elem.	301	301	286	15,256	15,036	4,312,718	4,191,363	4,076,510	1,8318	1,8670	1,8380	
Sanger.....	Unif.	6,263	6,263	6,142	10,264	9,926	45,710,848	44,125,763	41,745,450	3,7684	3,5773	3,5293	
Salina.....	Unif.	4,077	4,077	4,007	9,468	9,406	25,772,429	25,926,009	25,366,290	4,3626	4,1626	4,4680	



Kern County									
Sierra.....	164	159	165,557	174,074	25,086,809	26,682,909	27,415,700	1,0100	1,2090
Sun-Finpire.....	545	569	20,714	38,060	10,536,653	10,600,866	9,572,740	2,2170	2,0430
Traquility.....	282	260	24,772	26,850	6,571,678	6,536,049	6,489,780	2,3680	1,9300
Westside.....	518	493	25,173	23,310	12,277,419	12,291,959	10,871,060	2,5230	2,4650
Arvin.....	1,350	1,415	19,145	---	25,305,140	26,437,030	19,056,860	2,73	2,44
Bakersfield.....	24,356	23,758	7,482	---	181,045,860	179,370,530	170,892,820	2,98	3,03
Beardley.....	1,829	1,880	10,939	---	19,785,680	20,499,880	17,915,390	3,02	2,47
Beldridge.....	83	82	370,136	---	27,976,610	28,500,460	20,604,190	.46	.64
Blake.....	9	11	141,992	---	1,424,620	---	1,845,860	.82	.06
Buttonwillow.....	434	437	44,614	---	2,177,940	19,496,420	13,211,270	1,61	1,74
Caliente.....	35	21	66,056	---	21,370,760	1,981,670	1,794,880	1,15	1,65
Delano.....	3,257	3,077	10,512	---	32,513,880	32,743,790	27,849,660	3,31	3,01
Du Giorgio.....	150	162	55,614	---	7,177,790	8,042,100	5,745,820	2,29	2,40
Edison.....	646	689	16,223	---	11,271,500	11,436,920	9,639,950	2,62	2,62
El Tejon.....	559	536	429	---	24,340,730	25,143,730	22,064,600	1,56	1,49
Grutwald.....	374	336	74,372	---	25,552,820	27,071,300	23,952,840	1,18	1,09
Greenfield.....	3,291	2,988	5,215	---	16,817,820	16,214,190	15,290,360	2,55	2,69
Lakeview.....	296	294	103,803	---	27,176,080	20,168,610	28,603,780	1,03	1,00
Lamont.....	1,830	1,776	5,527	---	10,689,500	10,142,260	9,813,540	3,06	3,28
Linus Valley-Poso Flat.....	63	61	87,077	---	3,690,430	3,831,360	2,722,590	1,15	.81
Lost Hills.....	119	65	39,334	---	2,457,870	24,370,710	18,901,340	1,47	.36
Maple.....	134	163	33,071	---	4,927,120	5,083,760	3,556,730	2,45	2,66
Marcopla.....	255	297	62,167	---	15,472,170	17,583,160	19,078,500	3,78	2,67
McFarland.....	1,201	1,157	19,482	---	23,171,910	23,027,140	18,116,760	2,18	2,11
Midway.....	222	239	157,771	---	41,500,930	35,971,860	31,527,280	.87	.84
Nojave.....	932	891	41,194	---	37,860,100	36,242,030	28,987,600	3,43	3,00
Panama.....	2,035	1,651	15,656	---	31,055,860	29,276,300	23,354,190	2,69	2,48
Pond.....	160	173	53,508	---	8,560,490	8,828,770	5,184,300	1,51	1,85
Rielland.....	1,790	1,804	13,240	---	21,801,820	23,064,320	20,382,770	2,93	2,93
Rio Bravo.....	127	145	160,628	---	15,984,380	21,845,350	18,761,590	1,05	.91
Semi Tropic.....	95	96	80,266	---	8,248,630	8,668,680	4,658,280	1,38	1,55
So. Kern.....	720	756	19,213	---	14,375,500	14,544,390	11,030,440	3,95	3,70
So. Fork.....	115	86	22,313	---	3,588,470	2,142,090	1,877,540	2,02	2,23
Standard.....	2,262	2,113	25,832	---	52,152,810	54,582,940	40,160,140	2,20	2,34
Taft.....	2,266	2,388	36,172	---	36,172,120	47,725,440	49,571,750	3,19	3,16
Tehachapi.....	1,295	1,209	19,782	---	23,400,240	24,477,170	19,345,860	4,32	4,17
Vineland.....	672	682	8,529	---	5,985,160	5,671,510	5,513,920	2,97	2,85
Wasco.....	1,901	1,811	14,198	---	26,685,680	27,047,110	19,820,170	2,04	2,06
Madera County									
Spring Va.....	44	50	96,244	74,503	3,950,015	3,950,015	3,446,220	1,0260	1,3210
Madera.....	7,919	8,058	7,743	---	68,739,110	68,739,110	62,770,285	1,3850	4,3190
North Fork.....	299	290	84,825	81,478	23,023,706	23,242,395	23,064,875	1,0370	1,2470

<sup>b</sup> Includes District Assessed Valuation in Monterey and San Benito Counties.

<sup>c</sup> Includes District Assessed Valuation in Madera County.

<sup>d</sup> Includes District Assessed Valuation in Tulare County.

<sup>e</sup> Includes District Assessed Valuation in Tulare and Kings Counties.

TABLE XIV—Continued

SCHOOL DISTRICTS INCLUDING LAND SUBJECT TO CONTRACTS OR AGREEMENTS PURSUANT TO CALIFORNIA LAND CONSERVATION ACT OF 1965 (WILLIAMSON ACT)

Assessed Valuation and Tax Rates for 1966-67, 1967-68 and 1968-69

Name of District	Type	Average Daily Attendance			Assessed Valuation Per Unit of Average Daily Attendance		Assessed Valuation			Tax Rates			
		68/69	67/68	66/67	67/68	66/67	68/69	67/68	66/67	68/69	67/68	66/67	
Madera County—Continued													
Wasuma.....	Elem.	109	123	116	13,042	11,388	1,675,605	1,433,605	1,201,755	1,9010	2.4040	2,5780	
Chowchilla.....	Unif.	992	1,069	1,012	13,572	13,151	12,596,530	12,486,915	12,227,905	2,0640	2.2990	1,8370	
Firebaugh (See Fresno County)													
Alwex.....	Elem.	119	137	147	38,712	30,831	4,635,180	4,662,780	4,183,160	2,3120	2.5400	2,1200	
Dairyleand.....	Elem.	240	242	228	30,134	28,344	6,504,210	6,473,640	5,858,735	1,6220	2,1040	1,8280	
Raymond.....	Elem.	63	59	61	45,300	38,410	3,092,605	2,959,995	2,131,650	1,3570	1,8360	2,3710	
Oakhurst.....	Elem.	276	270	266	22,914	18,832	6,492,530	5,434,115	4,621,260	1,9740	2,3480	2,7190	
Coarsegold.....	Elem.	55	66	62	27,409	18,459	2,619,320	1,627,850	1,053,155	1,7380	2,1680	2,4570	
Marin County													
Bolinas-Stinson.....	Elem.	130	130	134	79,631	64,427	10,624,502	10,537,910	8,603,820	2,105	2,135	1,910	
Dixie.....	Elem.	4,980	4,732	4,459	9,003	8,961	47,682,899	43,811,948	38,724,460	3,690	4,648	3,925	
Laguna.....	Elem.	23	23	16	61,569	61,587	1,567,783	1,597,984	1,193,300	1,590	1,540	1,730	
Lincoln.....	Elem.	15	15	10	97,175	88,756	1,467,582	1,686,543	1,295,510	1,185	1,910	2,315	
Mill Valley.....	Elem.	3,063	3,606	3,444	17,024	17,661	66,887,533	62,617,454	58,951,790	3,135	3,150	3,145	
Nicasio.....	Elem.	45	45	44	57,691	47,412	2,628,949	2,502,202	2,075,850	2,190	2,120	1,575	
Tomas Bay.....	Elem.	225	219	206	34,377	26,535	7,930,944	7,228,230	5,401,340	1,530	1,390	1,675	
Union Joint.....	Elem.	11	11	15	53,006	42,701	469,764	659,764	610,720	1,720	1,495	1,395	
West Marin.....	Elem.	300	315	285	37,465	28,907	12,339,756	11,011,395	8,128,560	1,730	1,815	2,920	
Novato.....	Unif.	11,925	11,256	10,477	9,166	7,914	75,512,481	73,338,524	60,661,090	5,155	4,885	5,330	
San Rafael.....	H.S.	4,133	3,834	3,580	42,053	40,044	166,120,298	156,706,685	139,905,940	2,265	2,140	2,200	
Tamalpais.....	H.S.	6,375	5,961	5,821	50,335	46,603	298,779,675	282,700,484	261,631,980	2,240	2,218	2,230	
Tomales.....	H.S.	200	191	202	121,743	93,247	23,032,760	22,732,562	18,351,580	2,115	1,320	1,480	
Mendocino County													
Ukiah.....	Unif.	6,217	6,088	6,040	12,149	11,988	56,858,320	45,770,280	43,373,680	4,5700	4,3700	4,4400	
Ardena.....	Elem.	370	366	304	17,092	20,605	6,091,800	5,953,100	5,941,370	3,5800	2,0200	1,9300	
Monterey County													
Alisal.....	Elem.	2,430	2,414	2,365	6,947	6,801	16,119,861	15,882,190	15,796,506	2,31	2,28	2,06	
Speckles.....	Elem.	425	439	419	63,175	54,941	26,183,365	26,274,625	22,484,790	1,84	1,84	1,58	
Carmel.....	Unif.	3,250	3,083	2,997	43,545	38,396	88,049,461	81,886,510	72,565,475	3,21	3,02	2,80	
Chualar.....	Elem.	280	296	261	28,033	30,498	7,543,765	7,372,675	7,610,260	1,69	1,76	1,67	
Gonzales.....	Elem.	800	792	762	14,569	11,715	11,281,920	10,971,000	8,815,315	1,93	1,85	1,74	

Greenfield-----	860	797	10,534,080	8,691,994	7,708,895	2.49	2.33	2.33
King City-----	1,020	929	21,097,105	17,443,675	14,881,540	2.34	2.30	1.96
Mission-----	80	87	2,469,795	18,617	1,589,565	1.89	2.05	1.68
Monterey-----	19,433	19,629	110,289,165	103,692,370	97,299,693	4.34	4.26	3.27
Peninsula-----								
Coalinga (See Fresno County)								
San Lucas-----	110	119	35,694	24,284	3,474,355	1.71	1.50	1.48
Santa Rita-----	778	714	9,995	9,091	10,638,735	8,743,415	2.07	2.19
Solead-----	1,294	1,291	10,061	7,962	14,052,555	12,380,125	2.59	2.18
Washington-----	440	403	19,870	18,262	8,631,885	7,943,345	2.67	2.35
North Monterey County-----	3,171	2,883	24,490	22,643	80,297,217	70,337,165	64,889,015	1.75
Bradley-----	30	25	135,406	151,662	3,148,145	3,885,720	1.64	1.40
San Ardo-----	140	137	175,568	161,214	15,820,790	23,454,380	1.69	1.41
Graves-----	13	14	169,675	117,662	1,936,245	1,850,835	2.15	1.25
<b>Placer County</b>								
Ackerman-----	218	262	11,287	11,631	3,435,094	2,979,800	1.76	1.8900
Alta-Dutch Plat-----	72	80	156,465	127,682	10,195,800	10,313,100	1.47	1.4000
Auburn-----	2,035	2,069	13,274	13,796	29,746,180	28,018,220	2.57	2.3900
Collax-----	285	318	17,184	16,007	5,531,608	5,556,750	2.57	1.8900
Forest Hill-----	214	215	22,054	28,269	3,456,183	5,278,050	1.97	1.9800
Loomis-----	1,335	1,360	9,937	10,312	13,746,364	12,904,060	2.02	1.9800
Penryn-----	290	269	8,244	8,975	2,416,164	2,369,730	2.51	2.2300
Placer Hills-----	901	929	13,126	12,330	12,999,687	11,027,820	2.30	2.1100
Center-----	1,286	1,223	2,356	2,627	3,013,576	3,308,330	1.33	1.3800
Western Placer-----	1,949	1,895	13,146	10,979	19,516,398	14,060,770	4.04	3.7800
<b>Riverside County</b>								
Corona-----	14,070	12,406	10,600	10,816	110,295,880	106,763,710	3.8985	3.5365
Jurupa-----	8,831	8,629	8,399	7,624	57,750,750	55,789,040	4.4576	4.5737
Henet-----	5,340	4,775	10,116	18,305	77,996,320	62,279,730	3.7580	3.6631
<b>San Benito County</b>								
Bitterwater-----	24	22	80,247	63,652	1,942,690	1,450,010	1.38	1.35
Cinenga-----	28	35	72,615	48,544	2,555,710	1,613,280	1.07	.95
Coalinga Univ. (See Fresno County)								
Hollister-----	1,962	1,849	13,611	12,961	24,803,510	23,502,320	2.42	2.34
Jefferson-----	19	21	68,737	44,906	1,330,250	1,149,400	1.16	1.22
North County-----	454	447	23,749	23,448	13,233,630	12,207,080	1.87	1.78
Panoche-----	14	15	273,249	22,081	3,731,620	3,659,910	1.28	1.21
San Juan-----	308	409	24,464	18,865	10,028,170	9,114,230	1.56	1.34
Tres Pinos-----	58	52	67,814	68,887	5,191,700	3,754,080	1.20	1.25
Willow Grove-----	74	84	71,222	50,363	5,564,970	4,275,750	1.37	1.18
<b>San Bernardino County</b>								
Chino-----	8,823	7,830	11,901	9,971	70,183,550	69,207,500	5.1922	5.041
Mt. View-----	115	109	65,525	48,898	9,034,430	8,973,680	2.0132	2.2030
Chaffey-----	10,927	9,497			302,203,720	289,324,000	2.4030	2.246

† Includes District Assessed Valuation in Sonoma County.

‡ Includes District Assessed Valuation in Santa Clara County.

TABLE XIV—Continued

**SCHOOL DISTRICTS INCLUDING LAND SUBJECT TO CONTRACTS OR AGREEMENTS PURSUANT TO CALIFORNIA LAND CONSERVATION ACT  
OF 1965 (WILLIAMSON ACT)**

**Assessed Valuation and Tax Rates for 1966-67, 1967-68 and 1968-69**

	Type	Average Daily Attendance			Assessed Valuation Per Unit of Average Daily Attendance			Assessed Valuation			Tax Rates		
		68/69	67/68	66/67	67/68	66/67	68/69	67/68	66/67	68/69	67/68	66/67	
San Mateo County	Unif.	2,535	2,307	2,171	14,595	14,855	28,728,260	27,824,417	25,513,726	5.9048	5.8071	5.8246	
	Unif.	490	463	428	26,900	29,420	9,822,915	9,886,455	9,563,640	5.8536	4.9986	4.5142	
	Elem.	11,987	11,553	11,004	17,101	17,892	222,356,028	208,103,723	202,197,709	3.0636	2.8579	2.7826	
	Elem.	1,076	1,064	1,051	20,811	20,870	23,932,000	23,400,375	22,579,175	3.5431	3.3544	3.3101	
	Elem.	5,823	5,601	5,456	3,924	9,201	57,200,727	52,725,655	51,725,170	4.3197	3.9265	3.8939	
Santa Barbara County	Unif.	14,333	14,485	14,539	20,510	19,522	64,320,165	64,571,935	63,148,770	3.76	3.57	3.54	
	Elem.	410	376	380	16,527	15,702	6,639,920	5,926,110	5,656,690	2.75	2.63	2.53	
	Elem.	95	102	76	24,775	33,193	4,367,590	2,423,710	2,398,940	2.08	2.21	2.11	
	Elem.	522	501	497	27,139	18,886	14,048,760	13,095,750	8,867,490	2.26	2.08	2.23	
	Elem.	186	185	156	50,120	57,892	8,810,660	8,814,850	8,443,880	2.49	2.57	2.20	
	Elem.	130	124	130	31,393	33,839	4,676,500	3,717,330	4,192,750	2.81	3.09	2.14	
		6,691	6,343	5,638	13,663	13,698	108,417,081	103,941,645	91,357,810	3.15	2.89	2.97	



Santa Cruz County												
Pajaro Va.-----	Unif.	12,095	11,774	11,484	13,602	12,026	i117,419,275	i110,525,950	996,514,787	4,105	4,303	4,106
Solano County												
Dixon-----	Unif.	1,920	1,875	1,804	23,669	24,020	33,906,885	33,772,975	32,615,440	3,6100	3,3600	2,8100
Fairfield-Suisun-----	Unif.	12,212	11,309	10,500	5,335	-----	68,179,015	59,128,260	54,892,590	4,5500	-----	-----
Sonoma County												
Alexander-Valley-----	Elem.	-----	183	160	16,294	16,225	2,900,290	2,825,550	2,420,260	1,4900	1,6000	1,5000
Bloomfield-----	Elem.	-----	1,895	1,645	10,413	7,656	18,200,285	18,001,850	11,756,360	2,2400	2,0400	2,1400
Bellevue-----	Elem.	-----	1,375	1,382	16,151	14,355	17,498,490	15,169,760	13,473,990	3,5100	3,7700	2,2300
Cloverdale-----	Unif.	-----	2,064	1,834	5,787	4,501	11,570,715	11,313,560	8,210,750	1,9600	2,0900	1,9600
Cotati-----	Elem.	-----	57	63	22,977	20,183	1,185,440	1,228,230	1,180,470	1,7500	2,0300	2,0300
Dunham-----	Elem.	-----	403	501	15,822	15,352	7,418,365	7,425,889	7,174,460	2,2300	2,4100	2,4100
Forestville-----	Elem.	-----	46	45	35,900	31,372	1,831,280	1,677,350	1,328,080	1,3700	1,5600	1,1100
Fort Ross-----	Elem.	-----	435	417	14,823	12,511	4,993,735	6,449,300	3,825,370	2,4100	2,8600	2,5000
Geyserville-----	Unif.	-----	754	797	8,729	8,944	6,262,160	6,280,860	5,808,660	1,7200	1,6200	1,7500
Gravenstein-----	Elem.	-----	346	344	16,338	15,299	5,422,890	5,354,870	4,902,080	2,0000	2,1600	2,0500
Harmony-----	Elem.	-----	1,441	1,425	12,808	11,888	19,316,080	17,494,610	15,787,630	1,9500	2,0000	1,8600
Headburt-----	Elem.	-----	53	53	48,623	-----	3,620,825	2,446,400	1,819,700	1,3500	1,3300	1,3900
Horicon-----	Elem.	-----	223	204	13,979	13,956	2,708,850	2,765,090	2,655,260	2,3500	1,8600	1,4900
Liberty-----	Elem.	-----	982	892	11,979	12,335	14,099,570	11,179,140	10,200,820	1,7800	1,8300	1,9100
Mark West-----	Elem.	-----	50	42	35,404	39,510	1,812,265	1,676,800	1,516,580	1,4400	1,7600	1,4600
Montgomery-----	Elem.	-----	633	613	12,446	12,219	7,415,335	7,164,240	7,033,550	2,2200	2,1400	2,0900
Oak Grove-----	Elem.	-----	1,302	1,056	11,130	9,701	14,151,225	13,777,760	9,613,920	2,1200	1,9100	1,8700
Old Adobe-----	Elem.	-----	4,092	3,550	10,477	10,928	40,687,565	39,948,100	36,174,290	2,1100	2,1500	2,1700
Palatoma-----	Elem.	-----	621	564	9,004	8,871	6,962,640	5,301,600	4,668,780	1,8500	1,9100	1,9700
Rincon Va.-----	Elem.	-----	3,657	3,624	10,682	10,600	39,407,510	36,206,860	34,754,050	1,9300	1,8500	1,8500
Bennett Va.-----	Elem.	-----	494	470	15,389	10,480	7,397,500	7,197,090	4,355,220	2,0300	1,8900	1,9700
Sonoma Va.-----	Unif.	-----	3,828	3,085	15,447	14,581	41,131,430	38,675,651	34,692,060	3,3200	3,1000	3,2100
Twin Hills-----	Elem.	-----	516	530	9,979	9,832	5,269,920	5,160,700	4,828,710	1,8400	1,8800	1,7100
Two Rocks-----	Elem.	-----	168	199	16,802	14,114	2,669,590	2,672,030	2,612,870	1,3700	1,4300	1,4200
See Marin County	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Watson-----	Elem.	-----	75	82	28,531	15,309	2,032,170	2,028,440	1,172,850	1,9000	1,8100	1,8100
Waukena-----	Elem.	-----	129	141	23,256	19,108	3,053,520	2,843,090	2,512,330	1,8400	1,6900	1,6900
West Side-----	Elem.	-----	549	504	9,058	9,727	4,751,815	4,711,890	4,565,080	2,0800	2,1800	2,0700
Wilnor-----	Elem.	-----	790	789	8,064	7,052	8,358,230	6,049,510	5,201,710	1,7900	1,9700	1,5400
Windsor-----	Elem.	-----	491	554	30,533	23,782	19,511,690	19,163,050	18,443,940	5,0400	3,9600	4,1100
Calistoga-----	Unif.	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Tehama County												
Antelope-----	Elem.	593	631	598	9,189	8,108	5,896,685	5,778,595	4,848,595	3,2500	2,0900	2,5100
Corning-----	Elem.	1,039	1,114	1,043	10,563	11,286	13,971,705	11,707,435	11,771,565	1,6300	1,6100	1,8200
Elkins-----	Elem.	54	55	39	39,691	42,008	2,350,120	2,183,020	1,638,330	1,4200	1,3500	1,2900
Evergreen-----	Elem.	225	220	205	24,625	25,408	5,341,755	5,417,435	5,208,735	2,2400	1,9600	2,1700
Flournoy-----	Elem.	3	33	24	49,992	68,343	1,553,470	1,649,750	1,940,240	1,6600	1,8700	1,1900

<sup>b</sup> Includes District Assessed Valuation in Stanislaus County.

<sup>c</sup> Includes District Assessed Valuation for Monterey and San Benito Counties.

<sup>d</sup> Includes District Assessed Valuation in Napa County.



TABLE XIV—Continued  
SCHOOL DISTRICTS INCLUDING LAND SUBJECT TO CONTRACTS OR AGREEMENTS PURSUANT TO CALIFORNIA LAND CONSERVATION ACT  
OF 1965 (WILLIAMSON ACT)  
Assessed Valuation and Tax Rates for 1966-67, 1967-68 and 1968-69

Name of District	Type	Average Daily Attendance			Assessed Valuation Per Unit of Average Daily Attendance			Assessed Valuation			Tax Rates		
		68/69	67/68	66/67	67/68	66/67	68/69	67/68	66/67	68/69	67/68	66/67	
Tehama County—Continued													
Gerber.....	Elem.	437	466	426	9,933	10,917	4,708,410	4,628,840	4,650,600	1.8100	2.0000	2.2100	
Kirkwood.....	Elem.	14	11	17	118,519	62,329	1,147,340	1,303,710	1,059,590	1.1800	1.2300	1.0100	
Lassen View.....	Elem.	325	329	296	18,799	15,747	6,257,060	6,184,760	4,660,995	1.7100	1.5700	1.8100	
Red Bluff.....	Elem.	1,843	1,904	1,787	14,477	14,407	28,250,285	27,563,475	25,745,875	2.0100	1.7600	2.0100	
Reeds Creek.....	Elem.	76	78	73	35,961	31,871	2,694,710	2,804,985	2,326,570	1.7500	1.8200	1.9100	
Richfield.....	Elem.	87	89	66	21,051	28,387	2,368,990	1,873,520	1,873,520	1.6400	1.7900	2.0100	
Los Molinas.....	Unif.	522	569	557	13,555	12,258	7,964,795	7,712,875	6,827,820	3.4400	3.4600	3.6100	
Tulare County													
Exeter.....	Elem.	1,074	1,071	1,013	18,759	17,127	19,704,798	19,002,535	16,354,120	1.6400	1.6400	1.6400	
Lindsay.....	Unif.	2,161	2,107	2,163	11,600	14,255	24,894,159	25,090,730	20,835,665	3.9200	3.7000	---	
Porterville.....	Elem.	4,598	4,470	4,264	9,014	9,075	38,932,141	38,437,212	35,811,740	1.9600	2.0600	---	
Tulare.....	Elem.	4,534	4,652	4,332	8,224	8,521	36,199,455	35,625,950	34,071,637	2.2500	2.2000	---	
Visalia.....	Unif.	12,962	12,883	12,415	8,438	11,808	107,930,472	104,761,144	94,444,645	3.7900	3.8000	---	
Woodlake.....	Elem.	1,068	1,132	1,055	12,523	10,974	13,584,440	13,212,060	10,612,255	2.0200	1.9100	---	
Three Rivers.....	Elem.	193	207	191	39,240	28,119	7,929,800	7,494,900	4,925,798	1.9100	1.6300	---	
Alpaugh.....	Unif.	186	201	205	18,352	23,077	4,245,853	3,762,161	3,403,935	3.7600	3.7400	---	
Cutler-Crosi.....	Unif.	2,471	2,513	2,440	6,459	8,144	16,608,441	15,758,982	13,190,030	3.4300	3.4100	---	
Delta View.....	Elem.	104	98	98	43,225	36,095	4,628,660	4,234,730	3,309,320	---	---	---	
Ducor.....	Elem.	183	168	156	65,854	55,022	10,529,707	10,273,207	8,137,230	1.5900	2.2300	---	
Earlimart.....	Elem.	1,171	1,216	1,199	10,427	9,884	12,979,380	12,501,880	10,719,815	1.8200	1.5600	---	
Hope.....	Elem.	77	80	72	42,468	34,910	2,674,390	3,057,715	2,290,840	1.8400	1.5900	---	
Hot Springs.....	Elem.	102	89	90	60,235	56,922	5,754,170	5,421,140	4,759,970	2.0100	1.7100	---	
Kings River.....	Elem.	416	409	399	8,300	8,094	3,328,535	3,311,505	2,985,925	2.0100	2.0300	---	
Liberty.....	Elem.	204	204	175	21,967	20,302	4,189,275	3,844,185	3,297,810	1.9100	1.4700	---	
Outside Cr.....	Elem.	100	101	109	23,424	21,918	2,539,580	2,553,185	2,251,480	1.5000	1.7300	---	
Paloverde.....	Elem.	458	453	424	15,490	13,486	6,797,675	6,567,940	5,271,555	1.8300	2.2400	---	
Prixley.....	Elem.	577	554	583	13,541	11,382	8,210,197	7,894,590	6,381,820	2.2400	1.7800	---	
Pleasant V.....	Elem.	331	356	366	11,112	9,234	4,004,763	4,006,855	3,152,725	1.7700	1.9800	---	
Sequoia.....	Elem.	225	229	217	31,331	25,679	6,974,600	6,798,780	5,195,390	2.0300	1.9500	---	

Springville.....	178	197	206	34,663	27,898	8,797,710	7,140,565	5,440,730	2,0200	1,8600
Strathmore.....	498	527	528	21,055	17,227	11,404,350	11,117,195	8,449,650	1,9100	1,8000
Sunnyside.....	363	382	364	21,969	19,363	7,802,990	7,996,650	6,544,600	1,3600	1,6600
Sundale.....	440	439	452	14,736	13,506	6,686,305	6,660,728	5,628,110	1,7500	1,7300
Tipton.....	332	349	310	24,678	20,869	8,050,185	7,650,266	6,028,560	1,6200	1,6100
Traver.....	236	220	19,808	16,168	15,091,410	14,357,795	13,223,620	1,7900	1,6900	1,6900
Woodville.....	412	404	8,904	8,203	4,171,002	4,309,630	3,718,205	2,0500	1,9600	1,9600
Monson-Sultana.....	288	337	319	14,164	12,669	4,757,192	4,518,336	3,779,340	1,7200	1,6500
<b>Tuolumne County</b>										
Bellevue.....	32	37	33	31,963	28,615	1,413,200	1,103,230	932,790	1,35	1,63
Groveland.....	200	178	155	25,535	24,552	5,522,065	4,714,670	4,504,480	1,98	2,03
Chinese Ca.....	32	32	32	32,184	44,001	1,103,990	1,012,130	951,380	1,37	1,32
Curtis Creek.....	402	403	365	17,418	16,530	7,237,315	6,900,465	5,927,179	1,93	1,45
Jameson.....	420	405	369	10,501	9,557	4,456,705	4,182,635	3,469,515	2,01	2,26
Sonora.....	675	672	669	18,778	17,364	12,753,380	12,440,840	11,422,250	1,77	2,09
Soulsbyville.....	222	209	175	14,037	13,793	3,080,580	2,825,010	2,362,340	2,51	1,87
Wards Ferry.....	9	11	29,949	21,865	204,860	264,840	236,370	1,30	2,56	2,12
Columbia.....	405	400	348	36,388	41,727	14,800,255	14,668,340	14,394,635	2,22	1,46
Summerville.....	390	387	375	11,874	11,564	4,744,375	4,536,220	4,254,840	2,47	2,02
Twaine Hart.....	498	398	299	27,354	27,992	10,949,290	10,636,140	9,876,660	2,38	1,97
Sonora.....	1,093	1,023	938	46,693	46,693	50,938,320	48,515,200	44,757,940	2,16	2,25
Summerville.....	320	312	304	47,309	47,309	15,693,665	15,172,360	14,131,500	2,35	1,35
										2,47

\* Includes District Assessed Valuation in Fresno County.

† Includes District Assessed Valuation in Kings County.

All information on this chart was obtained from County Superintendents of Schools, The California State Department of Education, or from the California State Controller. Assessed Valuation per unit of Average Daily Attendance shown for Unified Districts represents elementary level only. Average Daily Attendance shown for Unified Districts represents elementary and secondary levels combined.

TABLE XV

**SCHOOL DISTRICTS WHERE DIFFERENCE IN ASSESSED VALUATION DUE TO  
CONTRACTS OR AGREEMENTS IS ONE PERCENT OR MORE OF  
DISTRICT ASSESSED VALUATION**

Name of District	1967-68 ADA	Type of District	County	Percent Differ- ence in A.V.	Actual Tax Rate 1968-69	Tax Rate Possible If No Land Under Agreement	Tax Rate Reduction Possible If No Land Under Agreement	Actual Tax Rate Increase (Decrease) 1968-69
Lincoln.....	15	E.	Marin	31.4	1.1850	0.9018	0.2832	(0.6300)
Blake.....	13	E.	Kern	26.4	0.8200	0.6500	0.1700	0.7600
West Marin.....	315	E.	Marin	17.4	1.7300	1.4736	0.2564	(0.0850)
Linns Valley-Poso Flat.....	44	E.	Kern	16.3	1.1500	0.9900	0.1600	0.3400
La Honda-Pescadero.....	463	U.	San Mateo	13.8	5.8536	5.1438	0.7098	0.8550
Laguna.....	23	E.	Marin	13.2	1.5900	1.4046	0.1854	0.0500
Nicasio.....	45	E.	Marin	12.9	2.1900	1.9398	0.2502	0.0700
Caliente.....	31	E.	Kern	12.8	1.1500	1.0200	0.1300	(0.5000)
Tomasles H.S.....	191	H.S.	Marin	12.7	2.1150	1.8767	0.2383	0.7950
Friant.....	59	E.	Fresno	11.9	1.8942	1.6928	0.2014	0.1242
Union.....	11	E.	Marin	11.1	1.7200	1.5482	0.1718	0.2250
Bitterwater.....	24	E.	San Benito	9.8	1.3800	1.2569	0.1231	0.2200
Liberty.....	223	E.	Sonoma	9.8	2.3800	2.1676	0.2124	0.5200
Wards Ferry.....	9	E.	Tuolumne	9.4	1.9100	1.1883	0.1117	(0.0200)
Three Rivers.....	207	E.	Tulare	9.1	1.9000	1.7507	0.1593	0.2800
Old Adobe.....	1,302	E.	Sonoma	8.9	2.1200	1.9467	0.1733	0.2100
Los Alamitos.....	124	E.	Santa Barbara	8.0	2.8100	2.6019	0.2081	(0.2800)
Raymond.....	59	E.	Madera	7.9	1.3570	1.2576	0.0994	(0.4820)
Bangor.....	87	E.	Butte	7.7	2.1800	2.0242	0.1558	(0.0370)
Dunham.....	57	E.	Sonoma	7.4	1.7800	1.6578	0.1222	(0.2500)
Latrobe.....	25	E.	El Dorado	7.0	1.2050	1.1262	0.0788	(0.0200)
Piner-Olivet.....	621	E.	Sonoma	6.9	1.8500	1.7306	0.1197	(0.0900)
Fort Ross.....	46	E.	Sonoma	6.4	1.3700	1.2876	0.0824	0.0100
Jefferson.....	19	E.	San Benito	5.5	1.1600	1.0995	0.0605	(0.0977)
Cabrillo.....	2,307	U.	San Mateo	5.2	5.9048	5.6130	0.2918	(0.0100)
Camino.....	373	E.	El Dorado	5.2	2.1200	2.0152	0.1048	(0.1700)
Semi Tropic.....	117	E.	Kern	5.2	1.3500	1.3100	0.0700	0.0000
Orange Center.....	518	E.	Fresno	5.0	2.1614	2.0555	0.1029	0.2000
Pond.....	173	E.	Kern	4.9	1.5100	1.4400	0.0700	(0.6500)
Tres Pinos.....	58	E.	San Benito	4.9	1.2000	1.1440	0.0560	0.2900
Arvin.....	1,383	E.	Kern	4.7	2.7300	2.6100	0.1200	0.1810
Northside.....	116	E.	El Dorado	4.7	2.0280	1.9369	0.0911	(0.1300)
Los Olivos.....	102	E.	Santa Barbara	4.4	2.0800	1.9923	0.0877	(0.2950)
Spring Valley.....	46	E.	Madera	4.2	1.0260	0.9846	0.0414	(0.3760)
Auberry.....	271	E.	Fresno	4.2	2.3860	2.2898	0.0962	0.0800
Gold Trail.....	331	E.	El Dorado	3.9	2.0200	1.9442	0.0758	0.1500
Honcut.....	74	E.	Butte	3.8	1.6390	1.5780	0.0610	0.2000
Tehachapi.....	1,295	U.	Kern	3.6	4.3200	4.1700	0.1500	0.0500
Belleview.....	1,825	E.	Sonoma	3.5	2.2400	2.1642	0.0758	0.0300
Horicon.....	53	E.	Sonoma	3.4	1.3800	1.3334	0.0466	(0.2888)
Mountain View.....	123	E.	San Bernardino	3.4	2.0132	1.9470	0.0662	0.0300
Lakeside.....	294	E.	Kern	3.3	1.0300	1.0000	0.0300	0.1400
Bennett Valley.....	494	E.	Sonoma	3.3	2.0300	1.9652	0.0648	0.2500
Southern Kern.....	795	U.	Kern	3.2	3.9500	3.8300	0.1200	0.0500
Chinese Camp.....	32	E.	Tuolumne	3.2	1.3700	1.3275	0.0425	(0.1000)
Wilmar.....	549	E.	Sonoma	3.1	2.0800	1.0175	0.0625	(0.1100)
Alexander Va.....	183	E.	Sonoma	3.0	1.4900	1.4466	0.0434	0.0800
Oak Grove.....	633	E.	Sonoma	3.0	2.2200	2.1553	0.0647	0.0900
Two Rocks.....	168	E.	Sonoma	2.8	1.3700	1.3327	0.0373	(0.3000)
Sunnyside.....	382	E.	Tulare	2.4	1.3600	1.3281	0.0319	0.0900
Wauha.....	75	E.	Sonoma	2.3	1.9000	1.8573	0.0427	(0.0500)
Ducor.....	168	E.	Tulare	2.2	1.5900	1.5558	0.0342	0.1500
Westside.....	129	E.	Sonoma	2.2	1.8400	1.8004	0.0396	0.0400
Petaluma.....	4,022	E.	Sonoma	2.2	2.1100	2.0646	0.0454	0.0700
Panoche.....	14	E.	San Benito	2.2	1.2500	1.2525	0.0275	0.3970
Silver Fork.....	28	E.	El Dorado	2.2	1.2350	1.2084	0.0216	0.1558
Air Point.....	37	E.	Santa Clara	2.0	2.0500	2.0098	0.0402	0.0100
Clovis.....	8,149	U.	Fresno	2.0	4.2788	4.1949	0.0839	(0.2270)
Willow Grove.....	74	E.	San Benito	1.9	1.3700	1.3445	0.0255	(0.1800)
Rescue.....	387	E.	El Dorado	1.9	2.0900	2.0508	0.0392	(0.0400)
Windsor.....	790	E.	Sonoma	1.8	1.7900	1.7583	0.0317	0.1200
Twin Hills.....	546	E.	Sonoma	1.7	1.8400	1.8092	0.0308	1.1100
Buelton.....	376	E.	Santa Barbara	1.7	2.7500	2.7040	0.0460	1.1600
El Dorado.....	2,192	H.S.	El Dorado	1.7	1.4550	1.4307	0.0243	(0.1800)
Maricopa.....	297	U.	Kern	1.6	3.7800	3.7200	0.0600	(0.1300)
Antelope.....	631	E.	Tehama	1.6	2.2300	2.1949	0.0351	0.1800
Forestville.....	493	E.	Sonoma	1.6	1.9600	1.9291	0.0309	0.1800
Cotati.....	2,064	E.	Sonoma	1.6	2.2600	2.2244	0.0356	0.1800
College.....	501	E.	Santa Barbara	1.6	2.3400	2.3130	0.0270	0.0400
King City.....	978	E.	Monterey	1.6				

TABLE XV—Continued

**SCHOOL DISTRICTS WHERE DIFFERENCE IN ASSESSED VALUATION DUE TO  
CONTRACTS OR AGREEMENTS IS ONE PERCENT OR MORE OF  
DISTRICT ASSESSED VALUATION**

Name of District	1967- 68 ADA	Type of District	County	Percent Differ- ence in A.V.	Actual Tax Rate 1968-69	Tax Rate Possible If No Land Under Agreement	Tax Rate Reduction Possible If No Land Under Agreement	Actual Tax Rate Increase (Decrease) 1968-69
Coarsegold.....	66	E.	Madera	1.6	1.7380	1.7106	0.0276	(0.4300)
Sierra.....	164	E.	Fresno	1.6	1.0100	0.9941	0.0159	0.1944
South Fork.....	101	E.	Kern	1.5	2.0200	1.9900	0.0300	(0.2100)
North County.....	454	E.	San Benito	1.5	1.8700	1.8400	0.0300	0.0900
Gold Oak.....	390	E.	El Dorado	1.5	2.0760	2.0453	0.0307	0.0750
Chino.....	8,349	U.	San Bernardino	1.4	5.1922	5.1205	0.0717	0.1512
Dixie.....	4,732	E.	Marin	1.4	3.6900	3.6391	0.0509	(0.9580)
Georgetown Divide.....	269	E.	El Dorado	1.4	2.1430	2.1134	0.0296	(0.0560)
DiGiorgio.....	158	E.	Kern	1.4	2.2900	2.2600	0.0300	(0.1100)
El Tejon.....	536	E.	Kern	1.3	1.5600	1.5400	0.0200	(0.0700)
Lost Hills.....	77	E.	Kern	1.3	1.4700	1.4500	0.0200	1.1100
Pleasant View.....	356	E.	Tulare	1.3	1.7700	1.7473	0.0227	(0.0100)
Cienega.....	28	E.	San Benito	1.3	1.0700	1.0563	0.0137	(0.0400)
Pollock Pines.....	465	E.	El Dorado	1.3	2.7430	2.7078	0.0352	
Sanger.....	6,263	U.	Fresno	1.2	3.7684	3.7237	0.0447	0.1706
Kings Canyon.....	5,440	U.	Fresno	1.2	3.7949	3.7499	0.0450	0.0301
Jurupa.....	8,629	U.	Riverside	1.1	4.4576	4.4091	0.0485	(0.2161)
Pioneer.....	117	E.	El Dorado	1.1	2.2310	2.2067	0.0164	
Buckeye.....	685	E.	El Dorado	1.1	2.2270	2.2028	0.0242	
Reed's Creek.....	78	E.	Tehama	1.0	1.7500	1.7327	0.0173	(0.0700)
Lassen View.....	329	E.	Tehama	1.0	1.7100	1.6941	0.0159	0.1400
Gravenstein.....	754	E.	Sonoma	1.0	1.7200	1.7030	0.0170	0.1000
Houghton-Kearney.....	228	E.	Fresno	1.0	1.9496	1.9303	0.0193	(0.0116)

## CHAPTER FIVE

### OPEN SPACE PROGRAMS IN OTHER STATES

A number of other states have enacted statutes which have as their objective the maintenance of land in agricultural or open space uses, the assessment of land on the basis of open space use, or a combination of the two.

Some states use positive means of restricting the use of land while others use the restriction as a condition for granting use-value assessment.

#### RESTRICTION

Basically there are three methods of regulating the use of land: 1. acquisition in whole or in part; 2. police power regulation and 3. contractual restriction.

Most states acquire title to lands for various governmental purposes, including public parks, recreation and conservation. Where acquisition of the fee simple is not warranted, but some control over land use is desired, several avenues are available. Various states have undertaken programs involving a combination of acquisition of less than fee interest, use of the police power and contractual agreements. Use-related assessment is usually offered as an incentive for landowners to participate in these programs. While California now relies heavily upon the contractual approach, not all states have done so. Pennsylvania, for example, relies upon an imaginative use of the acquisition technique. Hawaii, on the other hand, is the only state to employ the police power in a state-wide land use program. Most states use a combination of the three.

#### ASSESSMENT

In the assessment of land there are basically two approaches to value: 1. full cash or market value and 2. values related to its capability of producing income. Replacement cost, the third generally accepted approach to value, is not usually applied to land.

Assessors generally prefer to use market data in valuing land. Indeed many state constitutions require market valuation. Landowners, particularly farmers, find that the effect of market-value assessment of land is to require the payment of taxes which are not related to the income that the land can produce. The result is to force him against his wishes to abandon farming and seek a more profitable use for his land. This decision frequently runs counter to public objectives.

On the ground that it is good public policy to keep such land in agriculture, many states have undertaken to relieve the farm landowner of such pressures by valuing his land upon its productive capability in agriculture.

In reviewing the programs of other states it is useful to describe the three general categories into which such programs are usually classified.



### **1. Preferential Assessment**

The practice of assessing open space land on the basis of its actual use, without regard to either its market value or land-use restrictions, is known as preferential assessment. Government simply accords open land a preferred status in the assessment process in an effort to prevent premature development resulting from tax pressure.

### **2. Deferred Taxation**

When land is given a dual assessment, the first according to its market value, the second according to its actual use, and the difference between the two figures is deferred into the future, the procedure is called deferred taxation. The deferred tax usually becomes due at the time of development and in such amount as to recapture the tax which the landowner saved as a result of the difference in the interim assessment.

### **3. Restricted Use**

When land must be subject to a land use restriction as a condition precedent to use-value assessment, the system is known as restricted use assessment.

These doctrines of restriction and assessment have been used in a variety of ways by various states. The Committee has examined all such programs. In the following pages some of the more noteworthy of these programs are outlined. It is hoped that by comparing these approaches a better understanding of the California program will be possible.

## **HAWAII LAND USE LAW**

### **Background**

Hawaii is the only one of the fifty states having anything resembling a positive and comprehensive state program of land use control. Because it is frequently mentioned as a desirable model, it warrants special examination and analysis in this Committee report.

Hawaii is an archipelago which includes nine major islands. Its total area is 6,412 square miles—about the size of Fresno County, California. About two thirds of its land area is made up by the Island of Hawaii. One fourth of its land is government owned. One half is owned by one or another of ten large trusts.

The population of Hawaii is 741,000 (1966), almost 80% of which resides in the City and County of Honolulu on the Island of Oahu, which occupies 598 square miles, or less than 10% of the total land area.

With the exception of Honolulu, which is a City and County, Hawaii has no city government. The only major units of local government are the counties of Maui, Kauai, and Hawaii and the City and County of Honolulu (Oahu).

### **Land Use Commission**

Hawaii's basic land use law was enacted in 1961. (Act 187, Session Laws of Hawaii, 1961.) The Hawaii Law established a State Land Use Commission of seven members holding no other public office, appointed and serving for terms as provided by law (Sect. 14 A-3, RLH). One member is appointed from each senatorial district and one at large. The Chairman of the Board of Land and Natural Resources and the

Director of the Department of Planning and Economic Development are ex-officio voting members.

### *Administration*

For administrative purposes, the Commission is a part of the Department of Planning and Economic Development. A Field officer serves as executive officer of the Commission. Departments of government are required to make available to the Commission "Such data, facilities and personnel as are necessary for it to perform its duties".

### *Gifts and Other Funds*

The Commission is authorized to receive and utilize gifts and any funds from the Federal or other governmental agencies.

### *Land Use Districts*

The law directs the Commission to place all lands of the State into one of the following land use districts: (1) urban, (2) rural, (3) agricultural, or (4) conservation. The law directs the Commission to set standards for determining the boundaries of each district, but provides that:

1. Urban lands that were on the date of enactment in urban use and a sufficient reserve area for foreseeable urban growth shall be included in urban districts.
2. Areas of primarily small farms mixed with low density residential lots ( $\frac{1}{2}$  acre minimum lots, maximum density of one house per  $\frac{1}{2}$  acre) shall be included in rural districts.
3. In the establishment of boundaries of agricultural districts, the greatest possible protection shall be given those lands with highest capacity for intensive cultivation.
4. Previously established "forest and water reserve zones" (Sect. 19-70. RLII) are renamed "conservation districts" and their boundaries shall constitute the boundaries of conservation districts with the commission empowered to determine the boundaries thereafter.

The Commission, in establishing the boundaries of districts within each county, is required to give consideration to the master plan or general plan of the county. (Added SLII, 1963, Act 205)

The law specifies the activities or uses to be included in each kind of district, with urban districts including activities and uses "as provided by ordinances or regulations of the county".

### *Adoption of Boundaries*

The Commission was required to prepare maps of proposed districts by January 1, 1964 and after public hearings to adopt district boundaries for all counties by July 1, 1964. Provision was made for protests and for notice of protest to interested counties.

### *Petitions for Change in Boundary*

Any department or agency of the State or county or any property owner may petition the Commission for either an interim or permanent change in the boundary of any district. The Commission may also initiate changes in district boundaries. Any petition or proposal for

change (including one initiated by the Commission) must be submitted to the Planning Commission of the county for comments and recommendations.

After notice and hearing, the Commission, with six affirmative votes, may approve the change; provided, that no change may be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district is classified and either the petitioner has submitted proof that (a) the land is usable and adaptable for the use it is proposed to be classified, or (b) the conditions and trends of development have so changed since the adoption of the present classification that the proposed classification is reasonable. Prior to 1963 amendment, the petitioner was required to prove that the area *was needed* for a use other than that for which the district was classified and either submit proof that (a) the land *was not usable or adaptable* for the use in which classified, or (b) the conditions and trends of development have so changed that the present classification *is unreasonable*.

### Zoning

#### Enforcement

Except in conservation districts, counties are empowered to govern zoning in accordance with existing law. Enforcement is by appropriate county office or agency. Conservation districts are governed by the Department of Land and Natural Resources pursuant to Section 19-70.

#### Permitted Uses—Agricultural and Rural Districts

Uses of land compatible with activities included in agricultural districts are permitted as determined by the Commission. Special use permits may also be issued. County standards existing on May 1, 1963 are established as the minimum lot sizes within agricultural districts.

Unless authorized by special permit, the only uses permitted within rural districts are:

- (1) Low density residential uses (one-half acre minimum lot, with maximum one house per  $\frac{1}{2}$  acre).
- (2) Agricultural uses; and
- (3) Public, quasi-public and public utility facilities.

#### Permit for Unusual and Reasonable Use

Any person may petition the planning commission of the county within which his land is located (or the zoning board of appeals in the case of the City and County of Honolulu) for a permit to put land within agricultural or rural districts to certain unusual and reasonable uses other than those for which the district is classified.

#### Adoption of Regulations

The Commission was required to prepare and, after a hearing in each county, adopt regulations relating to matters within its jurisdiction.

#### Periodic Review

Review of regulations and classifications and districting of land is required at five year intervals after adoption.

### *Adjustments of Assessing Practices*

Certified copies of classification maps are directed to be filed with the Department of Taxation which, when making assessments of property, must give consideration to the uses that may be made of the land as well as the uses to which it is devoted.

### *Dedicated Lands*

The 1961 act also established a special dedicated land reserve and enabled the owner of lands within an agricultural, rural, conservation and/or an urban district to dedicate his land to a specific ranching or other agricultural use and to have his land assessed at its value for such use (Chapter 128, RLH 1955 as amended).

To accomplish this the owner must petition the Director of Taxation and declare that his land can best be used for the purpose for which he requests permission to dedicate it, and that if the petition is approved he will use his land for this purpose.

Subject to (1) a finding of fact by the Land Study Bureau that the land is reasonably well suited for the intended use, (2) a finding of fact by the Director of Planning and Research that the petitioned use is not in conflict with the overall development plan of the State, and (3) his own finding in the case of land within an urban district, that the intended use of the land is economically feasible, the Director of Taxation shall approve the petition and declare the land dedicated land. The finding of the Land Study Bureau must be based upon the productivity ratings of the land, a study of the ownership, size of operating unit, present use of similar surrounding land, and other appropriate criteria.

Where land is in an urban district (1) the lessee with five or more years remaining on his lease is deemed the owner; (2) the land dedicated must be used for agricultural purposes, and (3) the land must have been used in an intensive agricultural use for the immediately preceding five year period.

Approval and dedication constitute a forfeiture by the owner of any right to change the use of the land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by the owner or the Director of Taxation upon five years' notice at any time after the end of the fifth year.

In case of a change in classification by a State agency placing the owner's land within an urban district, the dedication may be cancelled within sixty days of the change by mutual agreement.

Any overt act changing the use of the land or failure of the owner to observe the restriction for a period of over one year cancels the special tax on that portion of the land withdrawn from dedicated use, retroactive to the date of the petition, and foregone taxes become due with 5 percent interest.

### *Dedicated Land in Urban Districts—Exemption From Taxation*

When the owner of land or other taxable real property in an urban district (including the lessee having ten years remaining on lease) dedicates a part of his land for landscaping, open spaces, public recreation and other similar uses, the dedicated portion is exempted in valuing and assessing the property.



The owner must state the exact area of the land to be dedicated, and that the land is not subject to set back and open space requirements of existing zoning ordinances. He must also state that the land unit shall be used, improved and maintained for the sole purpose for which it is dedicated.

Prior to approval, the Director must make a finding that the value to the public of the land in the use dedicated will be at least equal to the real property taxes otherwise due.

Approval of the petition by the Director involves the same conditions as in the case of the dedication of land for agricultural use, namely:

- (1) No change in land use for ten year period, automatically renewable indefinitely, subject to cancellation by either party upon five years' notice at any time after the end of the fifth year.
- (2) Cancellation of the exemption, retroactive to the date of petition, with recovery of exempted taxes plus five percent interest for failure to observe restrictions or overt change in use. The owner may appeal from any disapproved petition as in the case of an appeal from an assessment.

### *Conservation Zones*

Conservation zones (formerly Forest and Water Reserve zones) initially encompassed all areas in the various counties contained in the forest reserve boundaries established January 21, 1957, whether either government or privately owned. No use, except a non-conforming use in existence at time of enactment of law or regulation, is permitted in such areas unless it is in accord with a zoning regulation adopted by the Department of Land and Natural Resources or is allowed under a temporary variance granted by the Director of Land and Natural Resources.

### *Application for New or Changed Use*

Any owner may apply to establish a new or different use on his land and he may make such use of his land if the Department either approves his application after notice and hearing, or fails to give notice, hold hearings and render a decision within 180 days after receipt of the application.

### *Review of Boundaries—Variances*

The Department is charged with reviewing and redefining the original boundaries of conservation zones, and is authorized to:

- (1) Allow variances under certain conditions;
- (2) Establish sub-zones to be restricted to certain uses, giving consideration to soil classification and use capabilities so as to allow and encourage the highest economic use consonant with conservation and maintenance of purity of water supply arising in or running or percolating through the land.

### *Regulations—Sub-Zones*

The Department is charged with adopting regulations which will have the full force and effect of law governing the use of land so as to not be detrimental to conservation of necessary forest growth and conservation and development of water resources.



The Department, by regulation, may establish sub-zones and specify land uses permitted within them which may include farming, flower gardening, nurseries and orchards, growth of commercial timber, grazing, recreational or hunting pursuits or residential use, and may specifically prohibit unlimited cutting of forest growth, soil mining and other detrimental practices.

### *Enforcement and Penalties*

The Department or owners of real estate directly affected are authorized to seek enforcement by court order of ordinances and regulations in these zones. A maximum fine of \$500 is established for violations. Final order of the Department may be appealed to the circuit court.

### *Assessment of Property*

In assessing property, the Director of Taxation is required to put all property into one of six general classes, including agricultural and conservation. In assigning land to one of these classes, the Director is required to consider (1) the districting established by the State Land Use Commission, (2) the districting established by a county in its general plan and zoning ordinance, (3) use classifications in the general plan of the State, and (4) "such other factors which influence highest and best use". In determining the value of land, consideration must be given, among other things, to easements, zoning, appurtenances, (and) dedication of lands as authorized by law. (Section 128.92 RLII)

### **Regulations**

Regulations have been adopted by the Commission to clarify and implement the law. They are minimum regulations only and county regulations, if more strict, would prevail. In some cases they merely restate the law.

Regulations adopted by the Commission list the following standards to be used by them in determining boundaries of the four districts.

### *Standards for the "U" Urban Districts*

Standards for determining boundaries of the "U" urban district include the following:

1. It shall be of "city-like" character.
2. It shall take into consideration proximity to centers of trading and employment and to basic services.
3. It shall include sufficient areas for urban growth in appropriate locations based upon a ten year projection giving consideration to state and county general plans.
4. It shall include lands of satisfactory topography and drainage, and free from floods.
5. It shall not include lands with high capacity for intensive cultivation unless other lands are not available.
6. It shall not include areas which contribute toward scattered urban developments.

**Standards for "A" Agricultural Districts**

Standards for determining boundaries for the "A" agricultural district provide that:

1. Lands with high capacity for agricultural production shall be included.
2. Lands with significant potential for grazing or other agricultural uses shall be included.
3. Lands with limited potential for grazing or agricultural uses or which require extensive development to reach moderate quality shall be included.
4. Small land areas having steep topography may be included.
5. Lands not suited to agriculture and ancillary activities may be included.
6. Lands in intensive agricultural uses shall not be taken out if it will substantially impair economical agricultural production.

**Standards for "C" Conservation Districts**

Standards for boundaries of "C" conservation district provide that:

1. Lands necessary for protecting watersheds, water sources, water supplies, and prevention of floods and soil erosion shall be included.
2. Lands necessary for the conservation, preservation, and enhancement of scenic or historic sites shall be included.
3. Lands for preserving wilderness and beach reserves for conserving endemic plants, fish and wildlife, forestry, and other related activities shall be included.
4. Lands with a general slope of 20 percent or more which provide open space amenities and scenic values shall be included.
5. Lands used for national or state parks may be included.
6. Coastal areas having an elevation below high water mark may be included.
7. Lands with steep topography that may not be normally adaptable for urban, rural or agricultural use may be included.
8. Lands suitable for flower gardening, farming, nurseries or orchards, growing of commercial timber, grazing, hunting and recreation, including facilities compatible with natural environment, may be included.
9. Land undergoing major erosion damage and requiring corrective action by government may be included.

**Standards for "R" Rural Districts**

Standards for boundaries of rural district provide that:

1. Areas consisting of small farms shall be included.
2. Areas characterized by low density residential lots no less than  $\frac{1}{2}$  acre in size with no more than one single family dwelling per half acre shall be included.
3. Generally, parcels of land of not more than five acres shall be included, though parcels larger than five acres may be.
4. Parcels of land where "city-like" concentration of people, structures, streets, and urban-level services are absent shall be included.
5. Parcels of land not suitable for agricultural uses may be included.

6. Contiguous small parcels not suited to low density residential or small farm uses may be included.
7. Parcels of land consisting of small farms need not be included if it will alter the general characteristics of the area.

### *Nonconforming Uses*

While it is the stated intention of the Commission's regulations to eliminate them expeditiously, lawfully existing non-conforming uses are allowed to be continued.

### *Proposed Legislation*

Two bills of interest were introduced at the 1967 session of the Hawaii Legislature. Both failed to pass but it is expected that they will be introduced again.

S.B. 959 was a proposal similar to the so-called "Scenic Easement Law" of California (Section 6950, et seq., Gov. Code). Much of its language was taken verbatim from the California Code. The principal and very important change was the granting to counties as well as the State of the right to acquire interest in property by condemnation.

S.B. 960 proposed a comprehensive State Open Space Plan.

## **PENNSYLVANIA**

The two principal means of controlling open space land use in Pennsylvania are contractual agreement and less than fee acquisition.

### *Covenants*

When a county has any of four legislatively prescribed categories of open space land designated "on any adopted municipal county or regional plan", any land so designated is eligible for restriction. Counties are authorized to enter into five year covenants with the owners of such land. Such covenants take effect only upon court approval. For any such covenant to be approved it must restrict the use of the land to open space for at least five years. These covenants run with the land and are automatically extended annually for an additional year.

### *Assessment*

Land which is subject to such a covenant is assessed at its "fair market value . . . as restricted by the covenant." The landowner may terminate the covenant by so notifying the county five years in advance of the termination date. The county may terminate the covenant "on the sole ground that the plan designating the land as farm, forest, water supply, or open space land has been amended officially so that the designation is no longer in accord with the plan."

### *Deferred Taxation*

Unauthorized change of use "constitutes a breach of covenant and the landowner must pay the county as liquidated damages, the difference between the taxes paid and the taxes which would have been payable absent the covenant, plus compound interest at the rate of five percent per year from the date of entering the covenant to the date of its breach." (Laws of Penn. Act No. 515 Sec. 6).

### Acquisition

The second Pennsylvania program focuses upon actual acquisition. The state, as well as counties, are authorized to acquire real property interests by "purchase, *contract*, condemnation, gift, devise or otherwise."

Neither the state nor the county governments may acquire such interests unless the "real property has been designated for open space use in a resource, recreation or land use plan submitted to and approved by the State Planning Board," or the County Planning Commission respectively.

When the state or county proposes to acquire less than the absolute fee, the landowner may compel acquisition in fee simple. When land is acquired in fee simple, the government must offer it for resale publicly within two years subject to the land use limitations retained by government.

Assessment of private interests in land subject to open space property interests must "reflect any change in market value of the property" resulting from the restricted use. In 1967, however, the General Assembly also proposed an amendment to the state's constitution. That amendment would allow the General Assembly to "provide for the taxation of land used for agricultural purposes on the basis of such use by providing for partial or complete postponement, abatement or exemption of the taxes based on the assessed value."

This later provision would apparently have no effect upon the market value assessment standard, but would allow the state legislature to grant direct tax relief.

### Conclusion

The Pennsylvania program employs several devices which are not common in other states. Perhaps the most significant of these is its linking of land use planning with land use regulation. At the state level there is no connection between planning and use restricting in California. The use of eminent domain to acquire valuable open space is a vital element in the Pennsylvania program. It is not used in this way in California. The purchase and resale with retained non-possessory interest is unique to Pennsylvania.

## FLORIDA

The Florida program is similar to that of Pennsylvania in that it employs a form of acquisition along with an element of contractual restriction.

The Florida law is similar to California's scenic easement statute (Section 6950 of the Government Code). It is like the California law in three ways. First the regulation is not necessarily tied to land use planning. Second the regulation is voluntary and may be gratuitous. Third it does not involve eminent domain.

### Recreational Land

#### Restriction

Florida law recognizes several avenues by which land may qualify for use value assessment. Section 193.202 authorizes "the owner . . .



of any land . . . utilized for outdoor recreational or park purpose" to "convey the development right . . . to the . . . county . . . or, by appropriate instrument, *covenant* with the . . . county . . . for a term of . . . ten years that the . . . land shall not be used . . . for any purpose other than outdoor recreational or park purposes."

#### **Assessment**

Lands which qualify under this provision are entitled to be "assessed as . . . recreational or park land . . . so long as such lands are actually used for . . . recreational . . . purposes. In valuing such land for tax purposes, an assessor (must) consider *no* factors other than those relative to its value for the present use . . ."

From this section it would appear that Florida employs a restricted-use assessment formula similar to that used in California. The question of whether the assessment procedure is in fact preferential or restricted-use value turns on the way in which the statute is administered. The statute provides that before the use of restricted land may be converted, government must first re-convey "all or part of the development right . . . or release (the) owner from the terms of the covenant." The re-conveyance "shall be made only after a determination . . . that such conveyance would not adversely affect the interest of the public."

#### **Agricultural Land**

##### **Restriction**

For agricultural land the standards for qualification are even less demanding than those needed for recreational land. Each county has an "agricultural zoning board" which zones the entire county each year. All land is zoned as either agricultural or non-agricultural. Section 193.201, Florida Statutes requires that "all lands which are used primarily for bona fide agricultural purposes shall be zoned agricultural."

Subsection 4 of that section implies that the word "zone" is not used in this context to connote an actual exercise of the police power. That subsection declares that "When property which is zoned as agricultural is diverted to another use or ceases to be used for agricultural purposes, the board shall reclassify such property as non-agricultural." By using the word "zone" as synonymous with "classify" and by implying an absolute freedom to breach the restriction, the statute seems to say that present use without restriction or commitment is sufficient to justify use-value assessment.

##### **Assessment**

Agricultural land is assessed under the same formula discussed above under recreational land.

### **CONNECTICUT**

The Connecticut program is a paradigm of the preferential assessment approach. As such it is wholly unlike the California program. Unlike Hawaii, Pennsylvania and Florida, no restriction as to land use is required. The only criterion for favored assessment is actual land use. So long as land remains in agricultural or open space use it is entitled to use-value or capitalized-income valuation.



Public Act 490 mandates use-value assessment on three categories of land. (1) Farmland which is "classified" by the local assessor upon written application from the landowner—any land "constituting a farm unit" is eligible. (2) Any forest land which comprises twenty-five acres and constitutes "in the opinion of the state forester a forest area" is likewise eligible for use-value assessment. The forest land designation is given by the state forester upon landowner application. The third category is described as "open space land" and includes any open space which is so designated by the "planning commission . . . in preparing a plan". The law declares that "Land included in any area so designated upon such plan . . . may be classified as open space land for purposes of property taxation *if there has been no change in the use of such area which has adversely affected its essential character as an area of open space land*".

Since actual use is the sole criterion for determining eligibility, rented land is eligible even if it is not normally used for farming and is owned by one who is not engaged in agriculture. Similarly, land which is used for farming, but only on a limited scale is eligible and is assessed on the basis of its actual income.

The public has no guarantee that the land will remain in open space use. There is no penalty for converting the use of the land and there is no tax recapture provision.

In these respects the Connecticut program is fundamentally unlike that of California.

### Regulation

Connecticut also has a general enabling statute authorizing the government to acquire various interests in open space land. It is similar to a California analog. However it is unlike California law in the respect that condemnation is permitted to acquire open space.

Section 6 of Public Act 490 provides that "Any municipality may, by vote of its legislative body, by purchase, *condemnation*, gift, devise, lease or otherwise, acquire any land in an area designated as an area of open space land on any plan of development of a municipality adopted by its planning commission or any easements, interest or rights therein and *enter into covenants and agreements with owners of such open space land* or interests therein to maintain, improve, protect, limit the future use of or otherwise conserve such open space land."

### MARYLAND

The Maryland approach is not unlike that which is followed in Connecticut. It is a preferential assessment program and does not involve any restrictions as to use. In addition the administration of the program is not keyed to planning and involves no penalty or deferred tax provision. Like the Connecticut program the Maryland approach is the antithesis of the California program. The best summary of the procedure employed in Maryland is found in the statute itself. Subsection 19(b) of Article 81 of the Annotated Code of Maryland provides that "Lands which are actively devoted to farm or agricultural use, shall, . . . be assessed on the basis of such use, and shall not be assessed as if subdivided, it being the intent of the General Assembly that the assessment of farm land shall be maintained at levels compatible with the

continued use of such land for farming and shall not be adversely affected by neighboring land uses of a more intensive nature".

The Maryland method of granting tax relief is somewhat more restrictive than some programs, but a great deal more liberal than that of California. All "bona fide farms" qualify for preferential assessment. The question of which farms are "bona fide" is determined by the State Department of Assessments and Taxation.

As in most other states the program is wholly voluntary. For that reason it is difficult to measure the effectiveness of the program as a tool to preserve open space, (See *Differential Assessment of Farmland Near Cities . . . Experience in Maryland Through 1965*, Peter W. House Economic Research Service, U.S. Department of Agriculture).

### NEW JERSEY

The New Jersey program can best be described as one of preferential assessment. Agricultural land is valued according to its productive value. Productive value is measured by attempting to determine the income which has been generated on certain types of land in various uses in past years. To make this computation an elaborate and circuitous methodology has been devised.

To begin with New Jersey's 215 soil types have been grouped into 5 general categories ranging from Group A—very productive to Group E—land unsuitable for tillage. Land uses have been divided into four categories. (1) Cropland harvested (2) Cropland pastured (3) Permanent pasture and (4) Woodland.

Estimates of farm acreage for each county are derived from Census data. Similarly the *percentage* of state farm income allocatable to agriculture in each county is projected on the basis of Census data. This percentage figure is applied to the state net farm income (derived from annual U.S.D.A. farm income data) to produce the net farm income produced in each county. Net income per county is then capitalized at 8% to establish the total value of land in farms in each county. A formula is used to determine the value of the four land-use categories. From this the per acre value of the land in each land-use category is determined. The last step is to adjust the land-use categories in accordance with the soil quality groups.

New Jersey has a tax deferral provision which is denominated a "roll-back". When the use of preferentially assessed land is converted the landowner must pay back the amount of tax saving which he derived in the last two preceding years.

The Farmland Assessment Act of 1964 established a unique program. However, the assumptions which underlie it are not self evident. Indeed they are shrouded in doubt. The first such assumption is that agricultural operations can be categorized as to soil quality and land use without considering other factors such as size, efficiency and proximity to markets or transport facilities. The second assumption is that current uses can be used to measure intrinsic value. The actual productivity of land is limited by the use to which it is put. Current productivity is not necessarily an index of optimum productivity.

The New Jersey plan does not encourage more productive use of land and appears to favor inefficient operators at the expense of other taxpayers.

In its reliance upon actual land uses and ergo actual incomes, the New Jersey program is dissimilar to the California approach. In California the assessor looks at particular parcels of land and not merely to soil categories. He evaluates the land with reference to slope, location and many other factors other than soil quality. When a California assessor looks at land use he looks at the highest and best use to which the land may legally be put. While the California assessor should assume that the land is being put to its highest and best restricted use, he is not bound by that assumption as is his New Jersey counterpart.

## OREGON

The Oregon program is difficult to categorize. It involves elements of preferential assessment, deferred taxation and restricted use assessment. The program is limited to agricultural land and consists of two parts. One program concerns zoned land, the other unzoned land.

### *Restriction*

Oregon employs only local zoning as a means of restricting land use.

### *Assessment*

The standard of valuation is market value whether land is zoned or unzoned. Any land which is within a "farm use zone" is automatically eligible for "special assessment". Land which is not in a farm zone may, upon application of the landowner, become eligible for the same assessment procedure if the land is used only for agricultural purposes.

### *Unzoned Land*

When the assessor accepts the application of the owner of unzoned land, he must make a dual assessment. One assessment is made on the basis of sales prices which reflect non-agricultural values, the other is made on the basis of sales which reflect only agricultural values. The tax bill includes both values. The difference between the two values is also noted on the landowner's tax bill. This difference accrues from year to year. When the landowner seeks to convert the use of his land he must pay the accrued deferral along with 6% interest for the past five years.

When sales are used the assessor is guided in his choice of permissible sales much as he is in California. When there is insufficient data to value the land by comparable sales, the assessor is expected to assess the land by capitalizing the income as reflected in typical rentals in the area. The capitalization rate is set by the State Tax Commission.

### *Zoned Land*

When land is zoned the assessor makes only one assessment. He uses sales data in arriving at market value. In the absence of adequate sales information he capitalizes the income at a rate specified by the Tax Commission. There is no tax deferral. When the zone is changed or the use of the land is converted the landowner pays no deferred taxes and no penalty.

If agricultural zoning in Oregon is significantly more permanent than zoning in other states the assessment program may be characterized as restricted-use value. If, however, Oregon zoning is subject to the same



infirmities commonly found in other zoning programs, it would be more accurately described as preferential assessment.

As has been noted earlier in this report California has rejected the deferred taxation approach which Oregon employs in the assessment of unzoned land. California has also declined to grant use-value assessment on the strength of a zoning restriction alone.

### INDIANA

The Indiana program consists of a thinly veiled preferential assessment program for timber land. It also contains an element of tax deferral which is similar to that of Oregon.

#### *Restriction*

The state forester of Indiana may "classify" land as either "forest plantation" or "native forest land". A forest plantation is once cleared land which is now in commercial timber production. A native forest is land which contains native timber producing trees—comprising forty square feet of basal area per acre or a thousand trees of any size.

Any qualified timber land may be classified upon application. Before the classification is final, the land must first be appraised by the county assessor.

#### *Assessment*

"Classified" land is assessed at the "fair market value", but the standing timber is totally exempt. (Acts 1921, C. 210, S. 6).

#### *Tax Withdrawal-Deferral*

Once land is "classified" it may be withdrawn from classification by the owner at any time. Upon the withdrawal of land from classification, the owner must pay either an "increment tax" or an amount equal to the real property taxes which would have been assessed during the period in which classified if the land had not been so classified plus interest at five percent per annum.

### NEVADA

The Nevada program was adopted in 1961 and was similar to the programs of several other western states, but wholly unlike that of California. It provided that in arriving at the full cash value of agricultural land the actual use and income were to be used to determine the full cash value of agricultural land. The Nevada Supreme Court held the statute unconstitutional as violative of the mandatory full cash value standard. (See *Boyne v. State ex real Dickerson*, 80 Nev. 160, 390 P.2d 255 (1964).) It was repealed in 1965.

### ARIZONA

The Arizona program is a refined example of the preferential assessment approach. In that respect it is similar to the Nevada program which was declared unconstitutional under Nevada law. The Arizona program is similar also in many ways to the programs of Utah, Texas and New Mexico.

### Assessment

Arizona does not tie the assessment procedure to land use restrictions. Full cash value is the mandatory standard for the assessment of all taxable property. However, the director of the Department of Property Valuation is charged with the duty to prescribe uniform methods by which local assessors must value property.

Section 42-123 Arizona Revised Statutes provides that "In the standard appraisal methods" prescribed by the director, "current usage shall be included in the formula for reaching a determination of full cash value". "Current usage" is defined as "the use to which property is put at the time of valuation by the assessor". The statute provides also that when market data are used "as an indication of market value, the *price paid for future anticipated property value increments shall be excluded*".

On the strength of this statutory authorization assessors in Arizona are valuing land by the capitalization of income technique. In so doing they look presumably only to "current usage". But since the Arizona assessor is required to reach the full cash or market value of the land it is difficult to weigh the importance of the last quoted statutory language. It is unclear how he can ignore "the price paid for future anticipated property value increments" and still reach market value. This is a significant question since the assessor may consider only actual use without regard to land use restrictions.

It is difficult to understand how an assessor can ignore speculative values and still arrive at market value. The result would seem to be that land assessed under this provision is in point of fact assessed under a different standard from that applied to other land. This is important when certain assessments are reduced and the tax burden is shifted to other tax payers who are given no assurance that the "current usage" of favored land will be continued.

### UTAH

The Utah procedure (Article XIII Sec. 3 Utah Constitution) is subject to the same infirmities present in the Arizona program.

The Constitution mandates the Legislature to "provide . . . a uniform and equal rate of assessment . . . on tangible property . . . according to its value in money". However, it also provides that "Land *used* for agricultural purposes may, as the Legislature prescribes, be assessed according to its value for agricultural use without regard to the value it may have for other purposes". These two provisions appear to be mutually exclusive.

### TEXAS

The Texas program is substantially similar to that of Arizona and Utah. Qualified agricultural land is accorded preferential assessment.

### NEW MEXICO

Unsubdivided land which has been used principally for agriculture for at least five years preceding the tax year is assessed on the basis of the land's productive capacity. Any portion of the land used for non-agricultural purposes is assessed separately.





## APPENDIX A

### OFFICE OF THE ATTORNEY GENERAL

State of California

THOMAS C. LYNCH, Attorney General

#### OPINION

of

THOMAS C. LYNCH  
Attorney General

JEFFERSON FRAZIER  
Deputy Attorney General

No. 68/27

May 3, 1968

THE HONORABLE RICHARD V. SMITH, COUNTY COUNSEL OF PLACER COUNTY, has asked our opinion on two questions:

1. When a city or county enters into a land conservation agreement with a "landowner" pursuant to the Land Conservation Act of 1965 (Gov. Code §§ 51200-95), must the city or county obtain the assent of a beneficiary under a prior, recorded deed of trust on the land?
2. If the beneficiary's assent is not obtained, will the purchaser at a foreclosure or trustee's sale take the land free of the restrictions of the land conservation agreement?

The conclusions are:

1. The trustor alone is the "landowner" within the meaning of the Land Conservation Act. The beneficiary's assent is not required.
2. If the trustor defaults and there is a foreclosure or trustee's sale, the purchaser would take free of the restrictions of the agreement.

#### ANALYSIS

##### I

Concerned by the rapid irreversible disappearance of some of California's most fertile soil beneath scattered suburban developments,<sup>1</sup> the Legislature in 1965 gave cities and counties a totally new land use planning tool. The Land Conservation Act of 1965 (also known as the Williamson Act) authorized cities and counties to establish

<sup>1</sup> See generally Cal. Dept. of Agriculture, *California Land Conservation Act of 1965, Handbook* (Dec. 1967); Cal. Assem. Int. Comm. on Agriculture, Staff Report, *Preserving Agricultural Land in Areas of Urban Growth* (May 20, 1964); Cal. Farm Bureau Fed'n., *Open-Space Land Assessment Procedures* (rev. ed., Jan. 1968); Univ. of Calif. Inst. of Govt. Studies, *Open-Space and the Law* (1965).

"agricultural preserves"<sup>2</sup> and through long-term contractual arrangements with owners of land within those reserves to restrict use of the land to "agricultural and compatible uses." Gov. Code §§ 51200-95.<sup>3</sup> In return, the owners would receive direct payments or lower property tax assessments based on the value of the land as restricted. See generally 47 Ops. Cal. Atty. Gen. 171 (1966). Implicit in the legislation was an assumption that high property taxes based on the developmental potential of the land are forcing farmers off these valuable lands. By giving landowners a tax incentive to continue farming, the Legislature hoped to slow the pace of urbanization so that these lands might be maintained for agricultural production and as "open spaces." §§ 51220-23.

The Land Conservation Act allows cities and counties to choose between two different but related forms of contractual arrangements: land conservation "contracts," §§ 51240-53, and land conservation "agreements," §§ 51255-56.<sup>4</sup> The "agreement" provisions were reportedly added in committee "as an afterthought in case landowners proved hesitant to place their property under the more rigid and limiting article 3 contracts." Comment, *Assessment of Farmland Under the California Land Conservation Act and the "Breathing Space" Amendment*, 55 Cal. L. Rev. 273, 279, n. 34 (1967). Originally, agreements could be as restrictive or as open-ended as the landowner and city or county thought would secure a lower property tax assessment, subject only to the broad mandate of section 51256:

"It shall be the policy of the city or county to secure agreements under which there is no reasonable probability of the removal or modification of the limitation or restriction within the near future." Stats. 1965, c. 1443, p. 3381. See 47 Ops. Cal. Atty. Gen. 171, 178 (1966).

While a provision that the agreement would be binding on grantees of the contracting owner seems clearly inferable from this provision, even that was not expressly required.<sup>5</sup>

<sup>2</sup> An "[a]gricultural preserve" is established "by resolution of the governing body of a city or county after a public hearing." Gov. Code § 51201(d). "Such preserves, when established, shall be for the purpose of subsequently placing restrictions upon the use of land within them, or supplementing existing restrictions, pursuant to the purposes of this chapter." *Id.* (Emphasis added.) Establishment of the preserve imposes no immediate restraint on the use of the land within its confines. The county is, however, then obligated to restrict land within the preserve to "agricultural and compatible uses" through contracts, agreements, zoning, or other devices. *Id.*

<sup>3</sup> Unless otherwise noted, all statutory references are to the Government Code.

<sup>4</sup> There are at least four important differences between the two devices: (1) *Contracts* provide for the payment of State funds to the county and to the landowner, unless he waives such payments, §§ 51260-61, whereas no public funds are expended under *agreements*; (2) The State is a party and has certain powers to approve, enforce or terminate *contracts*, §§ 51250, 51252, 51281-82, whereas *agreements* are made directly between the county and landowner; (3) *Contracts* are permissible only in "agricultural preserves" of 100 acres or more, § 51242(b), while *agreements* are possible on preserves of any size; (4) *Contracts* may be made only as to "prime agricultural land," § 51242(c); *agreements* may apply to either prime or non-prime land. Cal. Farm Bureau Fed'n., *Open-Space Land Assessment Procedures*, *supra* note 1, at 20.

<sup>5</sup> Curiously, an amendment to section 51256 in 1967 added language specifying that "[t]he agreement shall be transferred from the city or county signing the agreement to any succeeding city or county. . . ." While the amendment followed section 51213 to that extent, it omitted the requirement that it be "transferred . . . to any succeeding owner." As the limitations are not to be "removed or substantially modified in the predictable future," however, a valid agreement would have to reveal an intention that it "run with the land" and bind "succeeding owners." Otherwise, the contracting owner could by conveyance remove the restriction at any time.

The contract sections of the Act, on the other hand, at least specify:

"Every such contract shall:

"(b) Be transferred from the contracting owner to any succeeding owner and from succeeding owner to succeeding owner.  
 . . . " § 51243.

Obviously, such a provision is essential for without it the contracting owner could "sell to a developer at a high price after reaping tax benefits." *Open-Space and the Law*, *supra*, n.1, 105.

Section 51244, moreover, state that "[e]ach contract shall be for an initial term of 10 years," and unless notice of non-renewal is given at the end of each year, an additional year is automatically added. In the event of non-renewal by the landowner, the restrictions continue nine more years. §§ 51244-45, payments decline each remaining year, § 51262, and tax benefits under section 421-25 of the Revenue and Taxation Code (A.B. 2011, 1967) cease immediately. Rev. & Tax. Code § 422. Mutual cancellation is possible but is deliberately made exceedingly difficult. See §§ 51250-56. Clearly, the Legislature intended these "contracts" to endure for many years, and to bind not only the contracting owner but his grantees as well.

To secure the full tax benefits of A.B. 2011 (Stats. 1967, ch. 1711), the land conservation "agreement . . . taken as a whole" must now contain "restrictions, terms and conditions which are substantially similar or more restrictive than those required by statute for a contract." Rev. & Tax. Code §§ 421-25, implementing Cal. Const. art. XXVIII. Even if the "agreement . . . taken as a whole" is not "substantially similar or more restrictive" than a contract, Rev. & Tax. Code § 422, the land may still qualify for a lower assessment under the "rebuttable presumption" of A.B. 80 (Stats. 1966, 1st Ex. Sess. ch. 147, p. 658; Rev. & Tax. Code § 402.1) that "the restriction will not be removed or substantially modified in the predictable future." Since assessments under A.B. 80 require a market value determination including comparable sales data where available, while those under A.B. 2011 "shall not consider sales data on lands . . . but shall consider only factors relative to the uses contemplated by local government and legally available to the owner by the provisions of the enforceable restrictions." Rev. & Tax. Code § 423, the parties to an "agreement" will usually attempt to create an "enforceable restriction" under A.B. 2011.

Until A.B. 2011 expires in late 1970 or 1971, the statutory provisions as to land conservation "contracts" and "agreements" are for practical purposes almost equivalent. For purposes of this opinion, therefore, we shall assume that an "agreement" will be not merely "substantially similar" but identical to a "contract," with the exception of those differences described in footnote 4, *supra*.<sup>6</sup>

<sup>6</sup> Since a valid "agreement" under section 51255-56 would have to be binding on "succeeding owners" (see *supra* note 5), our conclusions would be the same as to an otherwise valid "agreement" which fails to meet the requirements of A.B. 2011.



## II

The first question is whether the city or county when it enters a land conservation contract or agreement must obtain the assent of a beneficiary under a prior, recorded deed of trust. The Act states only that the contract or agreement shall be negotiated with the "landowner." *E.g.*, §§ 51241, 51255-56. Nowhere in the Act, however, is that term defined.

While the meaning ascribed to the word "owner" obviously varies, depending on the context, *Pacific Coast Jt. Stock Land Bank v. Roberts*, 16 Cal.2d 800, 805-06 (1940), both the language and purpose of the Williamson Act compel the conclusion that here it refers to the farmer-trustor, and not to either the trustee or the beneficiary. See *Wasco Creamery and Construction Co. v. Coffee*, 117 Cal.App. 298 (1931); *Ripkey v. Binns*, 264 Mo. 505, 175 S.W. 206, 208 (1915); *City of Chicago v. Sullivan Machinery Co.*, 269 Ill. 58, 109 N.E. 696 (1915). Although the Act does not define "owner," it does expressly recognize the different interests of the farmer-owner and the encumbrancer. § 51283.3(2). Where the Legislature has intended "owner" to be given a broader meaning, it has generally added words to that effect. See, *e.g.*, Bus. & Prof. Code §§ 11589-90; Health & Saf. Code § 11013; Ins. Code § 383.5; Pub. Resources Code § 9021.

The whole purpose of the Land Conservation Act, moreover, is to ease the property tax burden on farmers, thereby encouraging them to keep their land in agriculture. Since the farmer-trustor is primarily responsible for paying property taxes on his land, obviously he and not the trustee or beneficiary is to receive the direct benefits.

Since the beneficiary is given no direct incentive to assent to the land conservation contract or agreement, he might well refuse. As against the possible indirect benefit to him that with lower taxes the trustor would be better able to repay his debt, the beneficiary would have to weigh the likelihood that the price at a trustee's sale with no development rights would be greatly reduced and possibly insufficient to cover his security. Giving the beneficiary an absolute veto over the trustor's participation in the land conservation program could impose an impossible administrative burden and defeat the very ends toward which the Land Conservation Act is directed.

The California law of trust deeds supports the conclusion that the Legislature intended the trustor alone to be a party to these contracts and agreements. Although California early adopted the "title theory" as to trust deeds, the California rule today is that title to land under a trust deed remains in the landowner-trustor except for a power of sale in the trustee. As one writer said:

"The trustee takes only such title as is necessary to the execution of the trust; until the necessity for a sale arises, the trustee's title lies dormant and in the meantime the trustor may convey or encumber the property and exercise all other ordinary rights of ownership." Ogden, *California Real Property Law*, 634 (1956).

All the incidents of ownership other than the right to convey on default remain in the trustor. *Zolezzi v. Michelis*, 86 Cal.App.2d 827, 830 (1948). The trustor has the right of possession, Civ. Code § 2927; *Kinnison v. Guaranty Liquidating Corp.*, 18 Cal.2d 256, 260 (1941),



and he may lease the land, *Dugand v. Magnus*, 107 C.A. 243 (1930), grant an easement, see 33 Cal.Jur.2d Mortgages § 246, convey or devise, Civ. Code §§ 864, 865; *Sacramento Bank v. Alcorn*, 121 Cal. 379, 383 (1898), issue a second trust deed, *Davidow v. Corp. of America*, 16 Cal. App.2d 6, 11-12 (1936), or declare a homestead, *King v. Gotz*, 70 Cal. 236 (1886), subject, of course, to the trustee's power of sale on default, and to any limitations enumerated in the deed of trust.

In short, nothing in the Land Conservation Act or the law of trust deeds requires the beneficiary or trustee to agree to be bound by a subsequent land conservation contract or agreement. Since such a requirement might defeat the purposes of the Act, it cannot be inferred. The beneficiary need not assent.

The legislative objective of confining the land to long-term agricultural use will be promoted, of course, if at the time the contract or agreement is signed the beneficiary's consent is obtained to subordinate his interest to the contractual restrictions. See Civ. Code §§ 2953.1-5.35. This would eliminate the possibility that, for the reason hereinafter stated, the land otherwise might be freed from the restrictions soon after the agreement was entered into because of a default by the trustor followed by a trustee's sale. In the absence of such subordination, the purchaser on default nevertheless might well be willing to negotiate new restrictions in order to receive the same tax benefits or payments which caused the trustor to agree originally—particularly if the land were then zoned exclusively for "agricultural and compatible uses." But, on the other hand, he might consider the rewards of development too great to resist.

### III

If the beneficiary under a prior, recorded deed of trust does not agree to subordinate his interest to the land conservation agreement's restrictions, will he or a purchaser at a trustee's sale nevertheless be bound by those restrictions? Since it is not expressly resolved by the Act, the answer to this question demands interpretation of the statutory provisions in the context of the general California law of contracts and real property.

As previously noted, the Legislature manifestly intended that land conservation contracts and agreements should bind the grantees of the contracting owner who voluntarily binds his land. §§ 51243, 51256; Rev. & Tax. Code § 422. The restrictions are expected to last for at least ten years and, since they are automatically renewed each year for an additional year unless expressly disavowed, probably much longer. § 51244; Rev. & Tax. Code § 422. Even if the owner gives notice of termination, unless the county (and as to contracts, the state) agrees to cancellation, the restrictions will remain for nine more years. §§ 51244-47.

In brief, these contractual restrictions are expected to remain for years—even decades—and to "[b]e transferred from the contracting owner to any succeeding owner and from succeeding owner to succeeding owner." § 51243. As to purchasers at a foreclosure or trustee's sale under a trust deed or other encumbrance executed and recorded *after* execution and recording of the land conservation contract or agreement,

the restrictions would unquestionably apply.<sup>7</sup> The problem arises only as to *prior* trust deeds.

In that connection it is important to note that the Land Conservation Act's mechanisms are wholly contractual. Although a city or county could through exercise of its police power bind all purchasers by zoning the land for "agricultural and compatible uses," the Land Conservation Act does not draw on that source of power but rather relies solely on the power of local government to make "contracts" and negotiate "agreements." The Act incorporates accepted principles of contract and property law throughout—to determine, for example, the "landowner," §§ 51241, 51255; the effect of recording, § 51244; enforcement methods, § 51252; and, of course, the relation of rights created by "contracts" and "agreements" to other interests.

Consequently, in order to determine whether for purposes of the Land Conservation Act the purchaser at a foreclosure or trustee's sale under a prior trust deed is the "succeeding owner" who shall be bound, § 51243(b), it is necessary to look to the law of real property, and, in particular, the law of trust deeds.

It has long been recognized that the development rights which would be conveyed by a grant in fee simple are embraced by the trust deed. As one authority has written.

"A mortgage or deed of trust upon land includes not only the soil but also all improvements thereon, fixtures thereto, minerals and other substances in place; and all easements, water rights and other appurtenant interests which are legally treated as part of the land,—in short, a mortgage or deed of trust on land is a lien or charge upon everything that would pass with a transfer of the land by deed." Ogden, *Escrow and Land Title Law in California* 204 (1938).

In accordance with this fundamental principle, one of the cardinal rules of real property is that when a trustor defaults and there is a trustee's sale, the purchaser's incidents of title are governed by title held by the trustor on the date of execution of the trust deed, together with any title he afterwards obtained—not by the trustor's title on the date of the trustee's sale. *Carpenter v. Smallpage*, 220 Cal. 129, 132 (1934); *Central Construction Co. v. Hartman*, 7 Cal.App.2d 703, 709 (1935); cf. Civ. Code § 2897; see generally 34 Cal.Jur.2d *Mortgages*, § 463, pp. 141-43; 37 Am.Jur., *Mortgages*, § 747, pp. 168-69. In *Hohn v. Riverside County Flood Control District*, 228 Cal.App.2d 605 (1964), the court summarized this "relation back" doctrine as follows:

"The trustee's deed on the sale under the power of sale passed to the purchasers (respondents) the title to the property held by the maker of the security instrument on the date he executed the same, and any title afterwards acquired. [Citations omitted.]

<sup>7</sup>The purchaser under a subsequent trust deed would be a "succeeding owner," § 51243(b), who took with notice of the restriction, § 51250. "The state may bring any action in court necessary to enforce any contract including, but not limited to, an action to enforce the contract by an action for specific performance or injunction relief," § 51252. As to agreements, the city or county could surely also enforce in equity any restriction prior to execution of a trust deed which was intended to "run with the land." In neither instance would the "relation back" doctrine apply.

"The purchaser at the trustee's sale and the grantee in the trustee's deed acquires title free of all rights of the trustor or anyone claiming under or through him, and his title is free of all claims subordinate to the encumbrance pursuant to which this sale was made. [Citations omitted.]" 228 Cal.App.2d at 612-13.

Under the "relation back" doctrine "a sale under the trust deed would terminate and cut off all rights in the real property which were created after the recording of the trust deed." *Bank of America v. Hirsch Merc. Co.*, 64 Cal.App.2d 175, 182 (1944). There are two exceptions: first, where the beneficiary authorizes the trustor to grant the right to a third party, see *Calidino Hotel Co. v. Bank of America*, 31 Cal.App.2d 295 (1939), (lease for mortgagee's benefit); and, second, where a statute is in effect at the time the trust is executed and both the beneficiary and the purchaser are on notice that the statutory rights take precedence. See *San Mateo Co. Bank v. Dupret*, 124 Cal.App. 395 (1932), (tax lien); *Higley v. City of Sacramento*, 149 F.Supp. 118, 121 (N.D. Cal. 1957), (water lien).<sup>8</sup>

The purpose of the "relation back" doctrine is two-fold: to preserve unimpaired the security which the beneficiary bargained for. *cf.* Civ. Code § 2929, and to enable purchasers at the trustee's sale to take certain title, unencumbered by any grants, leases, liens, or other restrictions subsequent to the date of execution of the trust deed to which the beneficiary did not assent. Without this rule, the trustor could impair the beneficiary's security interest by, for example, granting an easement or by entering into a long-term lease and collecting the rent in advance or leasing for a nominal amount. See *Harris v. Foster*, 97 Cal. 292 (1893). Where the antideficiency judgments statutes apply, moreover, the doctrine is of special significance, for the beneficiary cannot hold the trustor personally liable but may only receive the proceeds of the sale. Code of Civ. Proc. §§ 580(a), 580(b), 580(d), 726; see also *Bank of Italy v. Bentley*, 217 Cal. 644, 658 (1933).

By consenting to a land conservation contract or agreement, the trustor voluntarily restricts the use of the land for a fixed period of time. While his net income may well be greater with the restrictions because of lower property taxes, like any other use restriction the contractual limitation constitutes a burden on the land.<sup>9</sup> *Cf. Fraser v. Bentel*, 161 Cal. 390 (1911). Yet, the beneficiary may well have loaned money to the trustor based not only on the income-producing capability of the farmland, but on its market value and its future prospects without such restrictions. See 3 Powell, *Real Property*, 556 (1967).

If the beneficiary must now realize his security out of the land as restricted, several consequences would follow. Since developers will be excluded from the sale, the sale price will probably be lower. The land's

<sup>8</sup> While the first exception could in a proper case apply to land conservation contracts or agreements, the second would not, even as to deeds of trust executed after enactment of the statute but before execution and recording of a contract or agreement. In contrast to a tax or water lien statute or ordinance, the Land Conservation Act creates no priorities; it merely authorizes local governments to negotiate *voluntary* restrictions with landowners. Where a party to the contractual limitation has no authority to bind another under the general law of property, the Act confers no additional authority, and in itself gives no notice. Notice **is given to others only** through recording of the restrictions. §§ 51244, 51250, 51255.

<sup>9</sup> Unless the Legislature acts in the meantime, the tax benefits of A.B. 2011 will lapse in late 1970 or 1971. Stats. 1967, ch. 1711, § 4. Since the use restrictions would continue for nine more years, this burden might be severe indeed. The possibility of legislative inaction is a risk the trustor—and, if he is asked to subrogate, the beneficiary as well—must consider.



value with the development rights restricted for at least nine years may well be less than if those rights were unimpaired.<sup>10</sup> Even if the value of the land as restricted proves adequate at the time of the sale, that restricted value is not what the beneficiary bargained for. Where his interest is small or the developmental potential of the land negligible, he may consent to subordinate his interest to the later contractual restrictions. But he is entitled to make that judgment, and the "relation back" doctrine guarantees him that right.

In short, we conclude that as a result of the "relation back" doctrine, the purchaser at a foreclosure or trustee's sale under a prior, recorded trust deed is not a "succeeding owner" within the meaning of section 51243(b) because his title relates back to a date before the land conservation contract or agreement was signed and recorded. Unless the beneficiary consents to subordinate his interest to the subsequent contractual restrictions to "agricultural and compatible uses," the purchaser's title at a trustee's sale or foreclosure sale will include full non-agricultural development rights.

<sup>10</sup> "[E]xperience has shown the value of the separate parts of property is greater than the whole. Oftentime the value of a particular right, *i.e.*, the development right, is not substantially different from the fee simple value. It would follow that the agricultural value would not necessarily be the difference between the fee simple value and the development right value." Cal. Farm Bureau Fed'n., *supra* note 1, 7-8.

## APPENDIX B

### OFFICE OF THE ATTORNEY GENERAL

State of California

THOMAS C. LYNCH, Attorney General

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#### OPINION

of

THOMAS C. LYNCH  
Attorney General

EDWARD P. HOLLINGSHEAD  
Deputy Attorney General

No. 68/137

November 7, 1968

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The STATE BOARD OF EQUALIZATION has requested an opinion on the following question with respect to section 1815.7 of the Revenue and Taxation Code, as amended by Stats. 1967, ch. 1711, p. 4274, effective November 8, 1967, and by Stats. 1968, ch. 1153, effective November 13, 1968:

Do the restrictive provisions of section 1815.7 of the Revenue and Taxation Code conflict with the requirements of the Constitution of California which govern the valuation of lands for intercounty equalization purposes when such lands do not qualify as "open space lands" under the statutes implementing article XXVIII of the Constitution of California?

The conclusions are:

Section 1815.7 is in conflict with the requirements of the Constitution of California which govern the valuation of lands for property taxation purposes. First, section 1815.7 prescribes a different set of rules for the board to follow in valuing land than are prescribed for the assessor and county boards of equalization. The application of different standards will, in many instances, result in disparate valuations of identical parcels of land and prevent the board from valuing such land at its true value in money. Second, in those instances where subdivisions (b) and (c) of section 1815.7 prevent the use of comparable sales and the land is valued by the capitalization of income method, the requirement that sales data from other lands may not be used in arriving at a capitalization rate has the effect of requiring the board to value the property at something other than its fair market value. Such restrictions may not be constitutionally applied to lands which do not qualify as "open space lands" under the statutes implementing article XXVIII of the Constitution of California.



## ANALYSIS

Article XIII, section 9, of the Constitution of California, set forth the requirements for the equalization of property tax assessments and directs the State Board of Equalization and the county boards of equalization as follows:

"A State Board of Equalization . . . shall be elected . . . whose duty it shall be to equalize the valuation of the taxable property in the several counties of the State for the purposes of taxation. . . . The boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe, as to county assessments, and under such rules of notice as the state board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, *so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value* in money of the property contained in said roll, . . ." (Emphasis added.)

It is clear that the State Board of Equalization and county boards of equalization, in performing their respective equalization functions, are required by the Constitution of California to arrive at the identical standard: ". . . the true value in money of the property . . ." It is apparent, therefore, that legislative restrictions on the valuation procedures of the State Board of Equalization for intercounty equalization purposes which are not applicable to county officials are immediately suspect and must be declared invalid if they prevent or impair the application of the standard imposed by article XIII, section 9. In this regard, it is to be noted that the full cash value requirements of article XI, section 12, and article XIII, section 1, of the California Constitution have been construed to require the same standard. *Hanks v. State Board of Equalization*, 229 Cal.App.2d 427 (1964); *Michels v. Watson*, 229 Cal.App.2d 404 (1964); approved in *County of Sacramento v. Hickman*, 66 Cal.2d 841, 847 (1967).

Sections 1815 to 1825, inclusive, of the Revenue and Taxation Code implement the requirements of article XIII, section 9, with respect to equalization by the State Board of Equalization. Section 1815 directs the board to make a survey, not less than triennially, ". . . to determine the total full cash value of all locally assessable tangible property as of the lien date for the last equalized roll, . . ." and to this end provides that the board ". . . shall ascertain the full cash value of a sample of locally assessable tangible property . . ."

Section 1815.7 of the Revenue and Taxation Code was added to the article relating to intercounty equalization by Stats. 1966, 1st Ex. Sess. ch. 147, p. 675. In its original form, it placed certain restrictions upon the board in the consideration of sales information, comparability of land from which sales data might be considered, and the number of sales of comparable land which must be available before comparable sales might be considered. It further directed that when representative

sales data is not available and the land is valued by capitalizing its income, the capitalization rate shall be predicated on risk, interest and allowance for property taxes. Chapter 147 also added section 1815.8 which imposes for inter-county equalization purposes the procedures prescribed by section 402.1 of the Revenue and Taxation Code, relating to the valuation of land subject to use restrictions.

Following the enactment of section 1815.7, the people approved Proposition 3 at the General Election of November 8, 1966, adding article XXVIII to the Constitution of California, which authorizes the Legislature to define "open space lands," restrict their use to recreation, scenic beauty, natural resources, or the production of food or fiber, and establish the basis for assessment of such lands.

Stats. 1967, ch. 1711, p. 4273 provided an interim implementation of article XXVIII of the California Constitution with respect to the valuation of "open space land." This act added sections 422 and 423 to the Revenue and Taxation Code, which direct the assessor, as well as the State Board of Equalization, not to consider sales data on other lands in valuing "open space lands" which are subject to any of the enforceable restrictions specified in section 422. The 1967 bill, however, went beyond the provisions for "open space lands" and amended section 1815.7 of the Revenue and Taxation Code to provide:

"(a) The board in valuing land may consider sales information on land comparable to the land being valued only if the land sold meets all usual tests of comparability, including those in Section 402.1, and specifically if:

"(1) The land sold is in the immediate vicinity of the land being valued, unless the use of the land is identical to that of the land being valued and no change in such use is predictable, and

"(2) The land sold is under similar use, or in a use productive of a similar return, unless there is reason to believe that the land being valued has the capability and imminent opportunity of being put to a use similar in nature or productivity to the use of the land sold.

"(b) At least five sales of land qualifying as comparable in subdivision (a) shall be required before the board may consider them to be representative of the value of the land being valued. A lesser number of sales may be considered to be representative if two or more of the lands sold about upon the land being valued.

"(c) When representative sales information is not available and the land is valued by capitalizing its income, *the income shall be predicated on estimated income which could be realized from the legally permitted use or uses of the land, unless the board's appraisers prove to the board's satisfaction that the permitted use or uses will be changed in the predictable future, and the capitalization rate shall be predicated on a rate of return which is based on allowances for risk, interest, and allowance for property taxes, which shall not be derived from sales data from other lands, so as to arrive at a capitalized income value; provided, however, that if the board's appraisers prove the permitted use or uses will be changed in the predictable future, the income shall be predicated on estimated income which could be realized from such use or uses*

*of the land and the capitalization rate shall be predicated on a rate of return which is based on allowances for risk, interest and property taxes, which shall not be derived from sales data from other lands, so as to arrive at a capitalized income value.*

“(d) When representative sales information is available the following influences on the sales price shall be considered:

“(1) The effects of the federal or state income, estate or gift taxes on the buyers and sellers that are not common to a large number of buyers or sellers.

“(2) The conditions that occurred at the time of the sales that are not likely to repeat themselves.

“(3) The methods of financing the sales.” (Italics and strike-outs added to indicate 1967 amendments.)

Section 1815.7 was further amended by Stats. 1968, ch. 1153, to provide, in subdivision (c) that:

“When representative sales information is not available and the land is valued by capitalizing its income, the income shall be predicated on estimated income which could be realized from the legally permitted use or uses of the land, ~~unless the board's appraisers prove to the board's satisfaction that the permitted use or uses will be changed in the predictable future, and~~ *In arriving at a value by capitalizing income*, the capitalization rate shall be predicated on a rate of return which is based on allowances for risk, interest and property taxes, ~~which and~~ shall not be derived from sales data from other lands, ~~so as to arrive at a capitalized income value; provided, however, that if the board's appraisers prove~~ *In arriving at a value by capitalizing income in those instances where the board's appraisers have proved to the board's satisfaction that the permitted use or uses will be changed in the predictable future*, the income shall be predicated on estimated income which could be realized from such use or uses of the land and the capitalization rate shall be predicated on a rate of return which is based on allowances for risk, interest and property taxes, ~~which and~~ shall not be derived from sales data from other lands, ~~so as to arrive at a capitalized income value.~~ (Italics and strike-out type indicate 1968 amendments.)

Section 1815.7, as amended, applies to all lands included in an intercounty equalization sample, not just those which qualify as “open space lands.”

It is apparent that the restrictive provisions of section 1815.7 do not by their own terms apply to county assessors in valuing land for the purpose of assessment or to county boards of equalization in equalizing individual assessments. As a result, section 1815.7 establishes different standards for the valuation of identical parcels of land by the board through its appraisal staff than are applicable to assessors, although the Constitution of California requires the application of the same standard. Under section 1815.7, subdivision (b), however, the board may not use comparable sales when fewer than the designated number are available even though the assessor may properly use them in making the assessment and the county board of equalization may consider them in equalizing the assessment. The result is that the board



must exclude evidence which the county officials may have used in the assessment and equalization of the property in the first instance. The exclusion of this evidence of value might result in a finding by the board of a much lower or higher valuation than the facts would warrant. This could mean that underassessment would not be detected, or worse, that a proper assessment by the assessor would appear to be excessive. It is apparent that the application of different standards of valuation will, in many instances, result in different valuations of identical parcels of land by the assessor and the board. Such a result runs afoul of the constitutional requirement that the true value in money of the property be the standard of valuation.

In discussing the standards of value to be applied in assessing property for purposes of taxation, the Supreme Court of California stated in *DeLuz Homes, Inc. v. County of San Diego*, 45 Cal.2d 546, 563, 564 (1955):

“Assessors generally estimate value by analyzing market data on sales of similar property, replacement costs, and income from the property (see 1 Bonbright, *Valuation of Property*, pp. 113-266; American Institute of Real Estate Appraisers, *The Appraisal of Real Estate*, pp. 75-85; Fisher, *Real Estate in California*, p. 157), and since no one of these methods alone can be used to estimate the value of all property, the assessor, subject to requirements of fairness and uniformity, *may exercise his discretion in using one or more of them.* (*Utah Const. Co. v. Richardson*, 187 Cal. 649, 652-653 [203 P. 401], *Southern Calif. Tel. Co. v. County of Los Angeles*, 45 Cal.App.2d 111, 116-118 [113 P.2d 773].)” (Emphasis added.)

These same considerations are applicable to the intercounty equalization function performed by the board under article XIII, section 9, of the Constitution of California. The discretion which assessors have respecting the valuation of property is denied to the board by section 1815.7. We are of the opinion that the board may not be deprived of this discretion in making intercounty equalization appraisals without violating the requirement of article XIII, section 9, that assessments be equalized in accordance with the true value of the property in money. Section 1815.7 may not, therefore, be applied to lands which do not qualify as “open space lands” under the statutes implementing article XXVIII.

Even if it be assumed that the Legislature could restrict the use of comparable sales as a criterion of value,<sup>1</sup> section 1815.7 improperly limits the use of sales data from other lands by imposing further restrictions in subdivision (c), both in the form it had under the 1967 amendment and as amended in 1968. Not only must the board not consider sales of other property where there are fewer than five comparable sales, or fewer than two sales in the case of comparable sales of property which abut the land being valued, but in valuing land by

<sup>1</sup> Authorities in the field of appraisal regard comparable sales as the best indicator of land value. G. Schmutz, “The Appraisal Process,” 77 (1953); American Institute of Real Estate Appraisers, “The Appraisal of Real Estate,” 66 (4th ed. 1964). Since the Constitution requires a finding of fair market value by the assessor, county boards and the state board alike, this requirement has the effect of limiting the power of the Legislature to restrict the use of comparable sales as evidence of value.

the capitalization of income method, it also may not derive the capitalization rate from sales data from other lands. The board is thereby blocked from utilizing any sales data, although the assessor and the county board of equalization may freely use such data and may, in fact, have utilized such data in the assessment and equalization of the property in the board's sample.

Subdivisions (b) and (c) of section 1815.7 have the effect of preventing the board from arriving at the fair market value of property in an intercounty equalization sample. It has been pointed out by the board that in a number of instances a fair market value appraisal must be made of unimproved land which has no income history. As noted above, where there are an insufficient number of comparable sales to satisfy subdivision (b) of section 1815.7, and the capitalization of income method of valuation must be utilized, subsection (c) of section 1815.7 forbids the use of any sales data from other lands in arriving at the capitalization rate. The board is, therefore, forced to use a capitalization rate based on ". . . risk, interest, and property taxes . . ." from other sources. The board's experience in attempting to apply these restrictive provisions has demonstrated that using risk and interest factors from other sources will almost invariably result in an excessive capitalization rate and a less than fair market value appraisal. In one instance cited by the board, a parcel valued by the usual methods at \$67,760 was appraised at \$29,000 under the section 1815.7 method.<sup>2</sup>

<sup>2</sup> An appraisal was made of rural non-open space land in which fewer than five comparable sales were used. An appraisal utilizing fewer than five sales is within the scope of section 1815.7(b) and (c) inasmuch as this number is defined as not being representative. In the absence of "representative sales information" (section 1815.6(b)) the statute makes a requirement upon the appraiser to use a composite rate "which shall not be derived from sales data from other lands" (section 1815.7(c)).

The section 1815.7 appraisal using the rate prescribed in Intercounty Equalization Appraisal Policy No. 10 is then compared with the original appraisal. Intercounty Equalization Appraisal Policy No. 10, which was issued April 10, 1968, as a guide to board appraisers, states in paragraph A 4:

"The capitalization rate applied to the income cannot be derived by comparison of incomes from other properties with their sales prices. Section 1815.7 apparently requires that a so-called 'built-up rate' be used, with components for risk, interest, and property taxes. Since the law precludes the use of market prices to test the validity of the capitalization rate, the rate that will be used is necessarily arbitrary. For appraisals as of the 1967 lien date, we will use an interest component of 4.6 percent (the yield on U.S. Government bonds with terms over ten years) plus a property tax component appropriate to the area in which the land is situated and a risk component of one percent for what the appraiser considers to be an average degree of risk. The risk rate component can be reduced to as little as one-half of one percent and raised to as much as two percent at the appraiser's discretion to reflect differences in the certainty that the income estimate will be realized year in and year out. The certainty of income from agricultural use should be judged in light of the risk of frost, flood, drought, hail, etc. damage, price stability, and like considerations."

#### MARKET VALUE APPRAISAL

<i>Land Use Acres Rental</i>	<i>Cap. Rate</i>	<i>Land Value by Capitalization</i>	<i>Value Per Acre</i>
Dry Farm			
portion 170 × \$8.00-Ac. ÷ .040 =		\$34,000	\$200
Grazing			
portion 422 × \$2.00-Ac. ÷ .025 =		33,760	80
Total Property Value		\$67,760	\$114

#### SECTION 1815.7 APPRAISAL

Dry Farm			
portion 170 × \$8 00-Ac. ÷ .076 =		\$17,895	\$105
Grazing			
portion 422 × \$2.00-Ac. ÷ .076 =		11,105	26
Total Property Value		\$29,000	\$49

The subject appraisal consists of 600 acres of land. The land use is 170 acres farmed to barley, 422 acres of cattle grazing, and 8 acres in highway use given



Whether the result of applying subdivisions (b) and (c) produces a valuation below or above the fair market value of the property, such valuation is neither correct nor accurate. Subsections (b) and (c) of section 1815.7 are, accordingly, violative of the true value requirement of article XIII, section 9, of the Constitution when applied to non-open space lands. For this additional reason, the limitations thereof are unconstitutional to the extent they are applicable to land which does not qualify as "open space land."

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no value and excluded from value calculations. The board's appraiser valued this property as of the 1966 lien date which was prior to the 1967 amendment to subdivision (c) of section 1815.7.

Valuing the subject property by the income approach, the appraiser used rental incomes of \$8.00 per acre for the 170 acres of land dry farmed to barley and \$2.00 per acre for the grazing land. Market observations indicated a 4% capitalization rate for the barley land and 2.5% for the grazing land. A market value of \$67,760 was derived.

Using the section 1815.7 composite rate from Appraisal Policy No. 10, paragraph A 4 of 4.6% (long term U.S. Government Bond yields), 2% (property taxes) and 1% (risk), the appraiser calculated a value of \$29,000 for inter-county equalization purposes.

## APPENDIX C

LEGISLATIVE COUNSEL OF CALIFORNIA  
Sacramento, California, February 18, 1969

Honorable John T. Knox  
Assembly Chamber

### PROPERTY TAXES—SUPPORT OF SCHOOLS—#1014

Dear Mr. Knox:

#### FACTS

When land is placed in an agricultural preserve and made subject to a contract or qualifying agreement pursuant to the California Land Conservation Act of 1965, it must be valued for assessment purposes as provided in Section 423 of the Revenue and Taxation Code. The usual effect is to reduce the assessed valuation below that which would have prevailed had the use of the land not been so restricted.

#### QUESTION NO. 1

In such instances, does the Board of Supervisors of a county now have the authority to levy a tax upon all taxable property in the county for the purpose of reimbursing school districts, for example, for the "loss" in revenue?

#### OPINION AND ANALYSIS NO. 1

A county has the powers specifically granted by charter or general law and such others as may necessarily be implied therefrom (*San Vicente Nursery School v. Los Angeles County*, 147 Cal. App. 2d 79), and may levy and collect taxes only as authorized by the Legislature (*Ferguson v. Gardner*, 86 Cal. App. 421).

There is no statutory authorization for the levy and collection of a county tax (as distinguished from *school district* taxes) to make up revenue losses which might be incurred by school districts as a result of the assessment of property under Section 423 of the Revenue and Taxation Code. Counties are authorized, however, to provide financial assistance to elementary school districts in certain circumstances.

Section 26154 of the Government Code provides, as follows:

"26154. The board of supervisors may provide financial assistance to elementary school districts which have within the boundaries of such school districts (a) a redevelopment agency and a housing authority organized under state law, or (b) any facilities used by the county to house county employees. Any funds received pursuant hereto by an elementary school district may be deposited by the governing board of the school district in any fund of the district. The provisions hereof are applicable only to elementary school districts which have an average daily attendance of less than 3,000."

Similarly, Section 26154.5 of the Government Code provides, as follows:

“26154.5. The board of supervisors may provide financial assistance to elementary school districts which have within the boundaries of such school districts any facilities used by the county to house county employees. Any funds received pursuant hereto by an elementary school district may be deposited by the governing board of the school district in any fund of the district. The provisions hereof are applicable only to elementary school districts which have an average daily attendance of less than 3,000.”

The only taxing device available to school districts to make up such revenue losses would be to increase the rate of school district taxes. In this connection it should be noted that the law fixes maximum rates at which school district taxes may be levied and collected (see Ed. C., Secs. 20751 et. seq.).

#### QUESTION NO. 2

In the event the Board of Supervisors does not now have such authority, can the Legislature so provide?

#### OPINION NO. 2

In our opinion, the Legislature could authorize a Board of Supervisors to impose a countywide tax to raise the needed funds.

#### ANALYSIS NO. 2

The basic issue involved in this question is the validity of a tax imposed upon property outside of the district receiving the funds.

In the past, the courts have upheld the expenditure of county money to improve a city street when the expenditure was also of interest and benefit to the people of the county (*City of Oakland v. Garrison* (1924), 194 Cal. 298, 303, 304; for cases of similar import see also *Whitmore v. Brown* (1929), 207 Cal. 473, 480; *Berkeley Unified School District of Alameda County v. City of Berkeley* (1956), 141 Cal. App. 2d 841, 846). In addition, it is not an uncommon practice for the Legislature to authorize counties to use county funds for district purposes (see, e.g., Secs. 25121, 26220, S. & H. C.; Sec. 25365, Gov. C.; Sec. 30702, P.U.C.). For that matter there are at least two instances where the Legislature has prescribed a countywide tax as a means of raising revenue for district purposes (Sec. 17261 and following, Ed. C., levy of countywide tax to offset decrease in equalization aid and supplementary support; see also Sec. 11101 and following, R. & T. C.), and to our knowledge the constitutionality of either tax has not been challenged (see 37 Ops. Cal. Atty. Gen. 185; 39 Ops. Cal. Atty. Gen. 92, where the operation of one such tax is discussed but its constitutionality is not called in question).

Thus, it may be seen that the proposal to impose a countywide tax for the benefit of a district is not an entirely new approach to financing such projects. Moreover, the countywide “source” of the loss of revenue in question, i.e., the reduced assessments resulting from contracts under the Land Conservation Act, together with the countywide problem of school funds involved, provide a strong argument that the expenditures contemplated would be of interest and benefit to the people of the county as a whole.

Therefore, it is our opinion that the Legislature could authorize a Board of Supervisors to impose a countywide tax to raise the needed funds.

Very truly yours,

GEORGE H. MURPHY  
Legislative Counsel

By Clinton J. deWitt, Deputy Legislative Counsel

CJd/k







STATE OF CALIFORNIA

JOINT LEGISLATIVE COMMITTEE FOR  
REVISION OF THE PENAL CODE

Penal Code Revision Project  
Tentative Draft No. 3

**SUBJECTS COVERED:**

CRIMES AGAINST THE ADMINISTRATION  
OF GOVERNMENT

THEFT

---

**July 1969**

Joint Legislative Committee for the Revision of the Penal Code  
Project Office: School of Law (Boalt Hall)  
University of California, Berkeley

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## INTRODUCTION

This is the third series of tentative drafts prepared by the research and drafting staff of the Penal Code Revision Project for submission to the Joint Legislative Committee for Revision of the Penal Code. The recommendations which it contains are tentative and subject to modification. They have not been acted upon by the Joint Committee and their publication does not imply endorsement or approval of any of its members.

The purpose of publication in tentative form at this time is to acquaint the public and those concerned in the administration of criminal justice with the work of criminal law revision in California. The project was authorized during the 1963 general session of the legislature.\* The Joint Committee was established at that time and charged with the duty of making a comprehensive and thoroughgoing study of California's criminal law and criminal procedure. After a survey of similar projects elsewhere in the United States, the Committee recruited its revision staff in 1964 and directed it to prepare recommendations in accord with the Committee's general charge to revise and simplify the criminal law of California.

The work of revision is now well under way. It has as its objective the formulation of a code of criminal law, a code of criminal procedure and a corrections code. The drafts contained in this report are indicative of the general style and approach of the revision staff in the substantive criminal law area. Work is going forward concurrently on a corrections code; the draft of a procedural code will await their completion.

Comment, suggestion and criticism of the tentative draft proposals are welcome and will receive the interested attention of the Joint Legislative Committee and its staff. Communications should be sent to the California Penal Code Revision Project, School of Law (Boalt Hall), University of California, Berkeley, California 94720.

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ARTHUR H. SHERRY

Project Director

PHILLIP E. JOHNSON

Acting Project Director (1969)

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\* Chap. 1797, Stats. 1963.



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## DIVISION 9. CRIMES AGAINST THE ADMINISTRATION OF GOVERNMENT

### Chapter 1. General Provisions

#### Section 1000. Definitions

In this division, the following terms have the following meanings:

(1) "Official function" means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.

(2) "Public servant" means any officer, member or employee of the legislative, executive, judicial or administrative branches of the State or of any political subdivision or governmental instrumentality within the State, any juror, any person exercising the functions of any such position, or any referee, arbitrator, hearing officer, or other person authorized by law to hear or determine any question or controversy. It includes a person who has been elected, appointed or designated to become a public servant, and, in the case of a juror, a person who has been drawn, empanelled, or designated to attend as a prospective grand or petit juror.

(3) "Benefit" means any gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested.

(4) "Pecuniary benefit" means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(5) "Material statement" means a statement which affected or could have affected the course or outcome of a proceeding, regardless of its admissibility under rules of evidence.

(6) "Statement" means any non-trivial representation, but a representation of opinion, belief or other state of mind, is a statement only if it clearly relates to a

state of mind apart from or in addition to the facts which it otherwise represents.

(7) "Official proceeding" means a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer an oath or cause it to be administered, including any referee, hearing officer, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

(8) "Statement under oath" includes

(a) a statement made pursuant to a swearing, an affirmation, or any other mode authorized by law of attesting to the truth of that which is stated; and

(b) a statement made on a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(9) "Testimony" includes oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.

(10) "Public record" means any record, document, or thing belonging to, or received or kept by the State government or any political subdivision or governmental instrumentality within the State.

(13) Except as provided in Subsection 1000(15), "custody" means

(a) restraint by a public servant pursuant to an order of a court [other than an arrest warrant] or of a duly authorized administrative agency; and

(b) restraint by a peace officer or other person concerned in detention

(i) with or without an arrest warrant, pursuant to an arrest during or subsequent to the official booking of the person arrested; or

(ii) in a detention facility.

(14) Except as provided in Subsection 1000(15), "detention facility" means

(a) any place used for confinement, pursuant to an order of a court, of

(i) persons charged with or convicted of an offense;

(ii) persons against whom judicial proceedings leading to involuntary confinement have begun, are pending or have been concluded;

(iii) persons against whom extradition orders are sought or have been obtained; or

(iv) persons otherwise confined pursuant to court order.

(b) any place to which a person ordered to be confined to a detention facility pursuant to Subsection (a) has been or is being lawfully taken for purposes of labor, court appearance, recreation, medical or hospital care, transit, or similar purpose.

(15) Neither "custody" nor "detention facility" includes release on parole, probation or other correctional supervision, or constraint incident to release, with bail or on one's own recognizance, by court order or by other lawful authority upon condition of subsequent personal appearance at a designated time and place.

(16) "Escape implement" means any article or thing which is capable of such use as may endanger the security of a detention facility or facilitate the escape of any person confined therein.

## Chapter 2. Bribery and Other Unlawful Influence

### Section 1010. Bribery

(1) A person is guilty of bribery if he offers, confers upon, or agrees to confer upon, a public servant any benefit as consideration for his performance of an official function.

(2) Bribery is a felony of the third degree.

### Section 1011. Bribe Receiving

(1) A public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept any benefit from another person as consideration for his performance of an official function.

(2) Bribe receiving is a felony of the third degree. Upon conviction the sentence may include forfeiture of the office of the public servant.



### Section 1012. Unlawful Influence

(1) A person is guilty of unlawful influence if he offers, confers upon, or agrees to confer upon, another person any benefit as consideration for improperly influencing or attempting to influence a public servant in the performance of an official function.

(2) A person is guilty of unlawful influence if he solicits, accepts or agrees to accept any benefit from another person as consideration for improperly influencing or attempting to influence a public servant in the performance of an official function.

(3) Unlawful influence is a felony of the third degree.

### Section 1015. Threats Against Public Servants

(1) A person is guilty of threats against public servants if he influences or attempts to influence the performance of an official function by a public servant by any threat which would constitute a means of committing the offense of theft by extortion under this code if such threat were employed to obtain property.

(2) Threats against public servants is a felony of the third degree.

### Section 1020. Giving Unlawful Gratuities.

(1) A person is guilty of giving unlawful gratuities if he offers, confers upon, or agrees to confer upon, a public servant any pecuniary benefit for having performed an official function in a manner favorable to him, or for having violated his duty.

(2) Giving unlawful gratuities is a misdemeanor.

### Section 1021. Receiving Unlawful Gratuities

(1) A public servant is guilty of receiving unlawful gratuities if he solicits, accepts or agrees to accept any pecuniary benefit for having performed an official function in a manner favorable to another person, or for having violated his duty.

(2) Receiving unlawful gratuities is a misdemeanor.

### Chapter 3. Perjury and Related Offenses

#### Section 1030. Perjury

(1) A person is guilty of perjury if, under oath in an official proceeding, he makes a false statement which is material and which he does not believe to be true.

(2) Whether a statement is material is a question of law.

(3) Perjury is a felony of the third degree.

#### Section 1040. Official False Swearing

(1) A person is guilty of official false swearing if he makes a false statement under oath which he does not believe to be true and:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is intended to mislead a public servant in performing his official function.

(2) Official false swearing is a misdemeanor.

#### Section 1041. Unsworn Falsification

(1) A person is guilty of unsworn falsification if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

(a) any written false statement of his own which he does not then believe to be true; or

(b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

(2) Unsworn falsification is a misdemeanor.

#### Section 1055. Defenses: Unavailability

It is not a defense to any offense defined in this chapter in which an oath is an element that:

(1) the oath was administered or taken in an irregular manner; or

(2) the authority or jurisdiction of the person administering the oath was defective, if the defect was excusable under any statute or rule of law; or

(3) the statement was subject to a proper objection, whether or not such objection was made; or

(4) the defendant mistakenly believed the falsification to be immaterial, where materiality of the statement is an element of the offense.

#### [Section 1056. Corroboration

No person shall be convicted of an offense defined in this chapter where proof of falsity rests solely upon contradiction by testimony of a single person.]

### Chapter 4. Offenses Against the Integrity of Official Proceedings

#### Section 1100. Witness Intimidation

(1) A person is guilty of witness intimidation if, by any threat which would constitute a means of committing the offense of theft by extortion under this code if such threat were employed to obtain property, he:

(a) attempts to induce any person to refrain from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; or

(b) attempts to induce any person who has been or may be properly called as a witness in any official proceeding to give false testimony in, to withhold testimony or information from, or to fail to attend, any such proceeding.

(2) Witness intimidation is a felony of the third degree.

#### Section 1101. Witness Bribery

(1) A person is guilty of witness bribery if he:

(a) offers, confers upon, or agrees to confer upon, any person any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to any offense; provided that it is an affirmative defense to a prosecution for witness bribery under this subsection that the benefit was honestly offered or conferred as restitution or indemnification for harm done in the circumstances of the offense; or

(b) offers, confers upon, or agrees to confer upon, any person who has been or may be properly called as a witness in any official proceeding any benefit as consideration for giving false testimony or information, for withholding testimony or information from, or for failing to attend, any such official proceeding.

(2) A person is guilty of witness bribery if he:

(a) solicits, accepts or agrees to accept any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; provided that it is an affirmative defense to a prosecution for witness bribery under this subsection that the benefit was honestly claimed as restitution or indemnification for harm done in the circumstances of the offense; or

(b) solicits, accepts or agrees to accept, in connection with any official proceeding to which he has been or may be properly called as a witness, any benefit as consideration for giving false testimony or information in, for withholding testimony or information from, or for failing to attend, any such official proceeding.

(3) Witness bribery is a felony of the third degree.

#### Section 1102. Witness Tampering

(1) A person is guilty of witness tampering if he attempts to induce any person to give false testimony in or to withhold testimony from any official proceeding to which he has been or may be properly called as a witness, or to fail to attend any official proceeding to which he has been lawfully called as a witness.

(2) Witness tampering is a misdemeanor.

#### Section 1103. Physical Evidence Falsification

(1) A person is guilty of physical evidence falsification if, believing that an official proceeding has been or is about to be instituted, he prepares, offers in evidence or uses any record, document or thing, knowing it to be false and with intent to mislead a public servant who is or may be engaged in the proceeding.



(2) Physical evidence falsification is a felony of the third degree.

#### Section 1104. Physical Evidence Destruction

(1) A person is guilty of physical evidence destruction if, believing that an official proceeding has been or is about to be instituted, he destroys, conceals or removes any record, document or thing with intent to impair its availability in the proceeding.

(2) Physical evidence destruction is a misdemeanor.

#### Section 1105. Juror Tampering

(1) A person is guilty of juror tampering if, with intent to influence the outcome of an official proceeding, he communicates with a juror, except as may be authorized by law.

(2) Juror tampering is a misdemeanor.

#### Section 1106. Juror Misconduct

(1) A person is guilty of juror misconduct if, pending or in advance of any proceeding which is or may be brought before him as a juror, he agrees to decide for or against any party to the proceeding.

(2) Juror misconduct is a misdemeanor.

### Chapter 5. Interference with Government Operations and Law Enforcement

Section 1200. Public Records Tampering [to be drafted]

Section 1201. Hindering Apprehension [to be drafted]

Section 1202. False Alarms [to be drafted]

Section 1203. False Reports [to be drafted]

Section 1204. Impersonating a Public  
Servant [to be drafted]

Section 1205. Resisting Arrest [to be drafted]

Section 1206. Obstructing Fire Control  
Operations [to be drafted]

Section 1207. Obstructing Government  
Operations [to be drafted]



Section 1208. Refusing to Aid a Peace  
Officer [or Fireman] [to be drafted]

Chapter 6. Escape and Related Offenses

Section 1300. Aggravated Escape

(1) A person is guilty of aggravated escape if he:

(a) escapes from custody within a detention facility;

(b) escapes from custody with the use or threat of use of force or violence upon another person or by any means creating a substantial risk of physical injury to another person.

(2) Aggravated escape is a felony of the third degree.

Section 1301. Escape

(1) A person is guilty of escape if he escapes from custody.

(2) Escape is a misdemeanor.

Section 1302. Assisting Escape

(1) A public servant concerned in detention is guilty of assisting escape if he knowingly assists an escape.

(2) Assisting an escape is a felony of the third degree.

Section 1303. Providing Escape Implements

(1) A person is guilty of providing escape implements if he knowingly introduces any escape implement within a detention facility, with intent to cause or assist the escape of any person confined therein.

(2) A person confined within a detention facility is guilty of providing escape implements if he knowingly makes, obtains or possesses any escape implement with intent to effect an escape of himself or any other person.

(3) Providing escape implements is a felony of the third degree.

Section 1307. Aggravated Failure to Appear

(1) A person is guilty of aggravated failure to appear when, having been released from custody, with bail or upon his own recognizance, by court order or by other lawful authority upon condition that he subsequently

appear personally upon a charge of a felony, he fails without lawful excuse to appear at the time and place which have been lawfully designated for his appearance.

(2) Aggravated failure to appear is a felony of the third degree.

### Section 1308. Failure to Appear

(1) A person is guilty of failure to appear when, having been released from custody, with bail or upon his own recognizance, by court order or by other lawful authority upon condition that he subsequently appear personally upon a charge of a misdemeanor [or petty misdemeanor], he fails without lawful excuse to appear at the time and place which have been lawfully designated for his appearance.

(2) Failure to appear is a misdemeanor.

### COMMENT TO Chapter 1

Chapter 1 contains a series of definitions which are pertinent to the other chapters in the division. These definitions are discussed immediately following the text of the chapter in which they first appear, and are not reproduced here. For example, Subsection (1) of Section 1000, defining "official function" is discussed in the Comment to Chapter 2, as the phrase "official function" first appears in Section 1010 of that Chapter, and Subsection (13) of Section 1000, defining "custody," is discussed immediately following the text of Chapter 6, as the word "custody" first appears in Section 1300 of that chapter.

## Chapter 2. Bribery and Other Unlawful Influence

### Section 1010. Bribery

(1) A person is guilty of bribery if he offers, confers upon, or agrees to confer upon, a public servant any benefit as consideration for his performance of an official function.

(2) Bribery is a felony of the third degree.

### Section 1011. Bribe Receiving

(1) A public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept any benefit from another person as consideration for his performance of an official function.

(2) Bribe receiving is a felony of the third degree. Upon conviction the sentence may include forfeiture of the office of the public servant.

### Section 1012. Unlawful Influence

(1) A person is guilty of unlawful influence if he offers, confers upon, or agrees to confer upon, another person any benefit as consideration for improperly influencing or attempting to influence a public servant in the performance of an official function.

(2) A person is guilty of unlawful influence if he solicits, accepts or agrees to accept any benefit from another person as consideration for improperly influencing or attempting to influence a public servant in the performance of an official function.

(3) Unlawful influence is a felony of the third degree.

### Section 1015. Threats Against Public Servants

(1) A person is guilty of threats against public servants if he influences or attempts to influence the performance of an official function by a public servant by any threat which would constitute a means of committing the offense of theft by extortion under this code if such threat were employed to obtain property.

(2) Threats against public servants is a felony of the third degree.

**Section 1020. Giving Unlawful Gratuities.**

(1) A person is guilty of giving unlawful gratuities if he offers, confers upon, or agrees to confer upon, a public servant any pecuniary benefit for having performed an official function in a manner favorable to him, or for having violated his duty.

(2) Giving unlawful gratuities is a misdemeanor.

**Section 1021. Receiving Unlawful Gratuities**

(1) A public servant is guilty of receiving unlawful gratuities if he solicits, accepts or agrees to accept any pecuniary benefit for having performed an official function in a manner favorable to another person, or for having violated his duty.

(2) Receiving unlawful gratuities is a misdemeanor.

**COMMENT to Chapter 2**

Proposed Chapter 2 of Division 9 provides general sanctions for the offenses of bribery and other unlawful influences on public servants. This class is defined broadly, but does not include voters and party officials, who are covered by the Elections Code.

**Section 1000. Definitions**

The definitions of Section 1000 which are pertinent to Chapter 2 are intended to make the substantive proscriptions generally applicable. Thus, the definition of "official function" in Subsection (1) is intended to comprehend every form of the exercise of governmental power and function:

(1) "Official function" means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.

The definition of "public servant" in Subsection (2) is intended to cover a wide range of persons and offices, as, for examples, judges (within the category of "judicial officer") and private arbitrators (within the category of "arbitrator"). As stated above, voters and party officials are not covered, their conduct being governed by the Elections Code.



- (2) "Public servant" means any officer, member or employee of the legislative, executive, judicial or administrative branches of the State or of any political subdivision or governmental instrumentality within the State, any juror, any person exercising the functions of any such position, or any referee, arbitrator, hearing officer or other person authorized by law to hear or determine any question or controversy. It includes a person who has been elected, appointed or designated to become a public servant, and, in the case of a juror, a person who has been drawn, empanelled, or designated to attend as a prospective grand or petit juror.

The implications of Subsections (3) and (4), defining "benefit" and "pecuniary benefit" are explicated in the discussion of the substantive offenses which follows.

### **Sections 1010 and 1011. Bribery and Bribe Receiving**

Sections 1010 and 1011 are complementary sections treating the offense of giving a bribe and that of receiving one. They broadly define the conduct which is proscribed:

1010. A person is guilty of bribery if he offers, confers upon, or agrees to confer upon, a public servant any benefit as consideration for his performance of an official function.

1011. A public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept any benefit from another person as consideration for his performance of an official function.

Each is a felony of the third degree, a penalty that is somewhat less than that which is contained in several of the existing Penal Code provisions.<sup>1</sup> In addition, a public servant found guilty of receiving a bribe may forfeit his office. Section 204(5) of this proposed code, Tentative Draft No. 2, p. 13, expressly provides that the code does not

"deprive the court of any authority otherwise conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence."

<sup>1</sup> *E.g., Pen. C. Secs. 67, 67½, 68, 85, 92, 93, 165.*



*Sections 3060, et seq.* of the *Government Code* provide a procedure for removal of a public officer for "wilful or corrupt misconduct in office." The effect of including the forfeiture of office provision in proposed Section 1011 is specifically to eliminate the need for a separate proceeding for the forfeiture.

The proposed sections do not include the additional sanctions of permanent disqualification from office or disenfranchisement as a voter.<sup>2</sup> In the language of the Comment to the 1967 Constitutional Amendment, Article IV, Section 15, dealing with the bribery of legislators, these sanctions were not included because they are "too harsh and inflexible."

A most perplexing problem is the definition of the consideration for the exercise of the governmental function. California law now speaks generally of "value or advantage," and is not limited to "pecuniary" gain.<sup>3</sup> On the other hand, those cases which have reached the appellate courts have generally involved clear financial rewards. So, too, there is some difficulty in conceiving of "gains" or "advantages" which do not have some economic or pecuniary significance, and some risk is created that a term like "gains" or "advantage" may be so encompassing as to render criminal a slight intimation of improvement in the status of the public servant. For these, and similar reasons, the Proposed Official Draft of the Model Penal Code distinguishes between "benefit" and "pecuniary benefit," requiring a "pecuniary benefit" as consideration for the improper exercise of discretion, but only a "benefit" for a violation of a known duty by a public servant or for the exercise of official discretion in a judicial or administrative proceeding.<sup>4</sup>

This draft rejects the Model Penal Code distinctions, adhering, in this regard, to the pattern of the recently adopted codes in other states.<sup>5</sup> The purpose of the provisions is the suppression of improper influences upon public officials. In the main, these influences will have the pecuniary significance subsumed in "pecuniary benefit," and it is most likely that these are the transactions which will be the target of criminal prosecutions. Where,

<sup>2</sup> *Cf.*, *Pen. C. Secs. 67, 67½, 68, 74, 86, 98, 165.*

<sup>3</sup> *E.g.*, *Pen. C. Secs. 7.6, 67, 67½, 74, 85, 92, 95, 165.*

<sup>4</sup> *P.O.D. Sec. 240.1.*

<sup>5</sup> *E.g.*, *Ill. Crim. C., Sec. 33.1; Minn. Crim. C., Sec. 609.42; N.Y. Rev. Pen. Law, Sec. 200.00; Wisc. Stats., Sec. 946.1.*

however, an official function has in fact been influenced by an offer of a benefit which cannot properly be characterized as "pecuniary," no persuasive reason appears why it too should not be made criminal.

The most difficult and controversial consequence of this broad coverage has to do with the promise of making or threat of withholding political or campaign contributions by one who seeks a particular governmental resolution to a matter in which he is involved. Manifestly, everyone has a right to contribute or withhold his contributions to political candidates for whatever reason he may entertain. The boundary line between proper and improper decisions of this kind, even though communicated to the decision-maker, is impossible to draw, and, indeed, at least theoretically, it applies equally to votes as well as funds. Literally, the proposed draft would make such communicated intentions criminal. On the other hand, in this literal respect the draft does not differ from existing California law and there does not seem to have been any abuse of prosecutorial power on this score in California to date. In the final analysis, the fortitude of governmental officials must be the shield to protect the integrity of the governmental process against the sword of reprisals at the polls, given the nature of the processes by which public servants are chosen in a democracy.

### **Section 1012. Unlawful Influence**

Section 1012 is addressed to the problem of the solicitation of benefits by one who is not a public servant for the ostensible purpose of improperly influencing a public servant in the performance of his official function. It provides:

- (1) A person is guilty of unlawful influence if he offers, confers upon, or agrees to confer upon, another person any benefit as consideration for improperly influencing or attempting to influence a public servant in the performance of his official function.
- (2) A person is guilty of unlawful influence if he solicits, accepts or agrees to accept any benefit from another person as consideration for improperly influencing or attempting to influence a

public servant in the performance of an official function.

(3) Unlawful influence is a felony of the third degree.

Proposed Section 1012 is a generalized version of present *Government Code Section 9054*, which is limited to the legislative branch.<sup>6</sup> Both the operative phrase, "improperly influence," and the penalty of felony are retained in proposed Section 1012. The proposed section is aimed at the person who holds himself out as able to corrupt the governmental process through improper influence, and does not affect existing legislation dealing with lobbying, *i.e.*, *Government Code Section 9900, et seq.* Thus, the primary penalty for violations of that legislation is a misdemeanor, whereas the penalty for violation of proposed Section 1012 is a felony of the third degree. Inasmuch as violation of the latter section necessarily involves corrupting influence, which violations of the lobbying legislation may not involve, the additional element of corruption warrants the higher penalty.

Much of the conduct proscribed by proposed Section 1012 would also fall under the prohibitions of the present solicitation statute, *Penal Code Section 653f*,<sup>7</sup> and under the solicitation provision proposed in the instant code, Section 305, Tentative Draft No. 2, p. 117.<sup>8</sup> Some of the conduct might also be reached under a theft by false pretenses statute, as where one who knows he cannot influence a public official seeks and receives money on the representation that he can. Proposed Section 1012 which is aimed at the "fixer" is consistent with these provisions and is included to assure that the conduct which is sought to be prohibited is clearly defined in a substantive provision.

<sup>6</sup> *Govt. C. Sec. 9054*: Every person who obtains, or seeks to obtain, money or other thing of value from another person upon a pretense, claim, or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative matter, is guilty of a felony. Upon the trial no person otherwise competent as a witness may be excused from testifying concerning the offense charged on the grounds that the testimony may criminate himself, or subject him to public infamy. The testimony shall not afterwards be used against him in any judicial proceeding except for perjury in giving the testimony.

<sup>7</sup> See *People v. Litt*, 221 Cal. App. 2d 543 (1963); *People v. Rissman*, 154 Cal. App. 2d 265 (1957); *People v. Mcgladdery*, 40 Cal. App. 2d 748 (1940).

<sup>8</sup> Sec. 805: A person is guilty of solicitation to commit a felony when with intent to promote or facilitate its commission he commands, encourages or requests another person to perform or omit to perform an act which constitutes such crime or an attempt to commit such crime or would establish his complicity in its commission or attempted commission.

## **Section 1015. Threats Against Public Servants**

Section 1015 makes criminal the use of threats to influence official action:

A person is guilty of threats against public servants if he influences or attempts to influence the performance of an official function by a public servant by any threat which would constitute a means of committing the offense of theft by extortion under this Code if such threat were employed to obtain property.

The system could logically be placed here or could be included, as it now appears to be, as a form of theft by extortion.<sup>9</sup> Proposed Section 1015 is a tentative resolution which uses the extortion techniques as the gravamen of the offense, but expressly places the offense in the series of Crimes Against the Administration of Government. The theory of the section is that whatever is criminal if used to extract property from private persons should also be criminal if it is used to extract favorable governmental decisions. In this respect, the draft differs from the Model Penal Code, which draws distinctions between threats of "harm" and of "unlawful harm" similar to those drawn between "benefit" and "pecuniary benefit."<sup>10</sup>

## **Sections 1020 and 1021. Giving and Receiving Unlawful Gratuities**

Sections 1020 and 1021 are new to California law. They proscribe gifts to public officers, not as inducements for conduct, but as rewards for official conduct after it has been performed:

1020. A person is guilty of giving unlawful gratuities if he offers, confers upon, or agrees to confer upon, a public servant, any pecuniary benefit for having performed an official function in a manner favorable to him, or for having violated his duty.

1021. A public servant is guilty of receiving unlawful gratuities if he solicits, accepts or agrees to accept any pecuniary benefit for having performed an official function in a manner favorable to another person, or for having violated his duty.

<sup>9</sup> See *Pen. C. Sec. 518*; see also *Pen. C. Secs. 69, 85, 96*.

<sup>10</sup> *P.O.D. Sec. 240.2*.



The integrity of the governmental process can be substantially impaired where governmental officials are the recipients of gratuities for actions they have undertaken, even though it is impossible to prove that there was any direct relationship between anticipation of a gift and the action. The prevailing California Penal Code provisions have been interpreted to require that the gift be an inducement to the official conduct.<sup>11</sup> The proposed sections are not so limited. In some circumstances, of course, the offense of giving unlawful gratuities will be a lesser offense included in the offense of bribery.

In an abundance of caution, the proscribed gratuities are here limited to "pecuniary benefits." Thus, testimonial dinners—not including, of course, those held for the purpose of raising funds for the honored public servant—and similar forms of special recognition to governmental officials for their official conduct are excluded from its scope. Indeed, as a general matter, these offenses generally are not intended to include gifts of nominal or token value.

## Other Provisions

The Proposed Official Draft of the Model Penal Code<sup>12</sup> makes criminal a number of types of conduct which are not included in the proposed article. These include Retaliation for Past Official Action,<sup>13</sup> Gifts to Public Servants by Persons Subject to Their Jurisdiction,<sup>14</sup> Compensating Public Servant for Assisting Private Interests in Relation to Matters Before Him,<sup>15</sup> Selling Political Endorsement; Special Influence.<sup>16</sup> These are matters which are for the most part not criminal in existing California law except to the extent that they are covered in general provisions like assault<sup>17</sup> and bribery,<sup>18</sup> or by special statutes.<sup>19</sup> No persuasive reason appears for a change in this regard.

<sup>11</sup> *People v. Coffey*, 161 Cal. 433, 119 Pac. 901 (1911); *People v. Kalloch*, 60 Cal. 116 (1882).

<sup>12</sup> See, generally, Article 240.

<sup>13</sup> *P.O.D. Sec. 240.4.*

<sup>14</sup> *Id.*, *Sec. 240.5.*

<sup>15</sup> *Id.*, *Sec. 240.6.*

<sup>16</sup> *Id.*, *Sec. 240.7.* Proposed *Sec. 1012* does cover some of the conduct defined in *Sec. 240.7(2)*.

<sup>17</sup> Compare *P.O.D. Sec. 240.4* with *Pen. C. Secs. 240, 518*, and proposed *Secs. 1510 (Assault)* and *1256 (Criminal Intimidation)*.

<sup>18</sup> See, *supra*, *Secs. 1011, 1012.*

<sup>19</sup> Compare *P.O.D. Sec. 240.5* with *Pen. C. Sec. 2541* (gifts to prison officials). Compare also, *P.O.D. Sec. 240.6* with *Cal. Govt. C. Sec. 68082* (judges and judicial officers); *Pen. C. Sec. 2540* (officers and employees of the Department of Corrections).



Finally, in some circumstances there may be an overlap with respect to the conduct proscribed in this chapter and that proscribed by the conflict-of-interest provisions of the Government Code, although in the great majority of circumstances there will be no direct duplication. Thus, *Government Code Section 1090, et seq.* prohibit conflict of interests of public officers in contractual matters (a felony punishable with five years' imprisonment); *Government Code Section 1120* prohibits the failure to disclose a financial interest in non-contractual matters (punishable by removal from office); and *Government Code Section 8920, et seq.* prescribe a Code of Ethics for the State legislative branch (punishable as a misdemeanor for an individual violator and as a felony for conspiracy).

The proposed grading structure of this chapter is not inconsistent with these other provisions, as the maximum penalty—for bribery, threats against public servants, and unlawful influence—is that of a felony of the third degree, and the penalty for violation of proposed Sections 1020 and 1021 is that of a misdemeanor.

### Chapter 3. Perjury and Related Offenses

#### Section 1030. Perjury

(1) A person is guilty of perjury if, under oath in an official proceeding, he makes a false statement which is material and which he does not believe to be true.

(2) Whether a statement is material is a question of law.

(3) Perjury is a felony of the third degree.

#### Section 1040. Official False Swearing

(1) A person is guilty of official false swearing if he makes a false statement under oath which he does not believe to be true and:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is intended to mislead a public servant in performing his official function.

(2) Official false swearing is a misdemeanor.

#### Section 1041. Unsworn Falsification

(1) A person is guilty of unsworn falsification if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

(a) any written false statement of his own which he does not then believe to be true; or

(b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

(2) Unsworn falsification is a misdemeanor.

#### Section 1055. Defenses: Unavailability

It is not a defense to any offense defined in this chapter in which an oath is an element that:

(1) the oath was administered or taken in an irregular manner; or

(2) the authority or jurisdiction of the person administering the oath was defective, if the defect was excusable under any statute or rule of law; or

(3) the statement was subject to a proper objection, whether or not such objection was made; or

(4) the defendant mistakenly believed the falsification to be immaterial, where materiality of the statement is an element of the offense.

### [Section 1056. Corroboration

No person shall be convicted of an offense defined in this chapter where proof of falsity rests solely upon contradiction by testimony of a single person.]

## COMMENT to Chapter 3

*Introduction.* This chapter treats a series of false statement offenses, ranging from the most serious, perjury, to a variety of other types of false statements which may affect public proceedings or private rights. The chapter attempts to place these offenses in a comprehensive, rational grading scheme and to delineate between those false statements which should be treated as criminal offenses and those which should remain free of criminal sanction.

The structure and grading of these offenses in the main are quite different from present California law, which includes a large number of provisions dealing with particular instances of this type of conduct. In substantial measure these provisions overlap and are mutually inconsistent with respect to the relationship between the gravity of the offense and the severity of the sanction.

The purpose of this chapter is to unify these offenses according to a comprehensive and coherent pattern. Necessarily, this will result in the repeal of a large number of existing offenses of this kind in the Penal and other codes. A list of these statutes will be included in the general repealer which will be incorporated in the final version of this code.

### Section 1030. Perjury

The most serious of the offenses in Chapter 3 is perjury, Section 1030, a felony of the third degree:

- (1) A person is guilty of perjury if, under oath in an official proceeding, he makes a false statement which is material and which he does not believe to be true.
- (2) Whether a statement is material is a question of law.

Several of the key elements of perjury are defined in Section 1000:

- (5) "Material statement" means a statement which affected or could have affected the course or outcome of a proceeding, regardless of its admissibility under rules of evidence.
- (6) "Statement" means any non-trivial representation. A representation of opinion, belief or other state of mind is a statement only if it clearly relates to a state of mind apart from or in addition to the facts which it otherwise represents.
- (7) "Official proceeding" means a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer an oath or cause it to be administered, including any referee, hearing officer, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.
- (8) "Statement under oath" includes:
  - (a) a statement made pursuant to a swearing, an affirmation, or any other mode authorized by law of attesting to the truth of that which is stated; and
  - (b) a statement made on a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

The main departure of Section 1030 from existing California law is with respect to the grading of the offense of perjury. Section 1031 makes perjury a felony of the third degree, carrying with it a maximum of five years' imprisonment, whereas existing California law, *Penal Code Section 126*, carries a penalty of fourteen years' imprisonment with the addition of capital punish-

ment where one "by willful perjury or subornation of perjury, procures the conviction and execution of any innocent person." *Penal Code Section 128*. The proposed reduction of maximum penalty is more consistent both with the general policy and structure of this code and with the realities of terms of imprisonment when perjury convictions are obtained. The death penalty provision has been omitted; ordinary causation doctrine should suffice in these unusual circumstances. Otherwise, the definition of the offense of perjury is largely what it is under existing law.<sup>20</sup>

### Section 1040. Official False Swearing

Imposing criminal sanctions upon false statements which do not amount to perjury presents difficult problems of both grading and of differentiating conduct which is to be made criminal from that which is not. Present California law comprehends a large number of criminal offenses, to be found throughout the codes, whose substance will be markedly changed by the adoption of proposed Section 1040, which provides:

- (1) A person is guilty of official false swearing if he makes a false statement under oath which he does not believe to be true and:
  - (a) the falsification occurs in an official proceeding; or
  - (b) The falsification is intended to mislead a public servant in performing his official function.
- (2) Official false swearing is a misdemeanor.

Proposed Section 1040 is taken from Model Penal Code, Proposed Official Draft.<sup>21</sup> As such, it defines two separate offenses, each of which differs from the crime of perjury in at least one respect.

Subsection (a) is identical to perjury with the exception of the omission of the element of materiality. Thus, one who lies under oath in an official proceeding is guilty of perjury if his false statement is material to the pro-

<sup>20</sup> Cf. definition of "material statement," *People v. DiGiacomo*, 193 Cal. App. 2d 688 (1961); *People v. Matula*, 52 Cal. 2d 591 (1959); *Pen. C. Sec. 119* defining "oath"; *People v. Pierce*, 66 Cal. 2d 53 (1967) (materiality of statement a question of law).

<sup>21</sup> *Sec. 241.2(1)*.



ceeding, but is guilty only of official false swearing if it is not.<sup>22</sup>

Subsection (b) dispenses with the perjury requirements of materiality<sup>23</sup> and official proceeding, but adds the requirement that the falsification must be "intended to mislead a public servant in performing his official function." Thus, the large number of statements which are required by law to be sworn in connection with applications to government agencies could not constitute perjury nor would they violate Section 1040(1)(a), since they would not be made in connection with an "official proceeding." They would, however, violate Section 1040(1)(b), if they were false and were made with intent "to mislead a public servant in performing his official function."

Violation of Section 1040(1) is a misdemeanor. In this respect the proposed draft differs from existing California law by providing a lower penalty than is now possible. *Penal Code Section 129*, for example, includes as perjury any statement required by law to be made under oath. A false statement in an application for a marriage license was thus held to constitute perjury under *Penal Code Section 129. People v. Torterice*, 66 Cal. App. 115 (1924). Under the proposal the offense could be no more than a misdemeanor. The wide range and different elements and structures of offenses of this kind in California law make it difficult to state the extent to which the proposed draft would make similar changes. It is likely that the changes will be significant; the result will, however, be an internally more consistent scheme of offenses.

## Section 1041. Unsworn Falsification

Section 1041 provides:

- (1) A person is guilty of unsworn falsification if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

<sup>22</sup> Materiality is a question of law, see Sec. 1030(2), and the defendant's belief that the statement is immaterial is no defense. Sec. 1055(4).

On the other hand, a mistaken belief that a statement is material, when it is not, would constitute an attempt to commit perjury, if the other elements of the offense of perjury were present.

<sup>23</sup> The Comment to Sec. 208.21(1) in the *Model Pen. C., Tent. Draft No. 6*, p. 140, states with respect to *Subsec. (b)* that the statement must be material. Yet neither the text of earlier Sec. 208.21(1) (*Tent. Draft No. 6*) nor that of *P.O.D. Sec. 241.2(1)(b)* literally includes a requirement of materiality. Presumably the draftsman thought that the element of "intent to mislead a public servant" sufficed for materiality. If so, the intention of the declarant must be the essence of materiality, a result seemingly inconsistent with Sec. 241.1(2), which provides that materiality is a question of law and that the mistaken belief of the declarant that the falsification was immaterial is no defense.

- (a) any written false statement of his own which he does not then believe to be true; or
- (b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

(2) Unsworn falsification is a misdemeanor.

It is not at all clear that mere unsworn falsification should be made criminal and, if so, what scope should be accorded to the offense. The draftsmen of the *Model Penal Code, Proposed Official Draft Section 241.3*—from which proposed Section 1041 is derived—recognized that this section was a “general extension of the law of punishable misstatements.” *Tentative Draft No. 6*, p. 142. There are persuasive arguments that even knowing false statements made to governmental officials should not be made criminal. At the same time, there are persuasive arguments that the integrity of governmental process requires that criminal sanctions be imposed. Indeed, there is some support for the position that criminal sanctions should extend to false oral statements made to public servants.

Proposed Section 1041 draws a compromise, making criminal only those false statements which are written and are made with intent to mislead a public servant.

The last clause of Section 1041(1)(b)—“not what it purports to be in the circumstances in which it is made, submitted or used”—is intended to cover those situations in which a document which is itself a true and valid document is used for a misleading purpose, as, for example, presenting the valid driver’s license of another as one’s own.

Once again, it is not at all clear how this proposal would affect existing California law, for the provisions of the California codes which treat this type of conduct frequently include elements which make them more likely to be embraced by other sections of this chapter.

**Non-Official False-Swearing.** *Section 241.2(2) of the Proposed Official Draft of the Model Penal Code* makes it a petty misdemeanor to swear falsely “if the statement is one which is required by law to be sworn. . . .” The

original version of this provision, *Section 208.21(2) of Tentative Draft No. 6*, included all private oaths, whether they were "required by law to be sworn" or not. This original version was presented by the Reporter with "hesitation," both because few states had comparable provisions and also because of the grave possibilities of abuse, as, for example, by some small loan companies. See *Tentative Draft No. 6*, pp. 140-1. The change in the Proposed Official Draft to include "required by law" was the consequence of a reconsideration by the Advisory Committee of these possibilities of abuse.

What apparently remains in the *Proposed Official Draft Section 241.2(2)* is a small category of transactions, private in nature, where the law requires that one or more of the parties take an oath. Although providing a criminal sanction for a false statement which the law requires to be sworn is theoretically warranted, the uncertain boundaries of such a provision, particularly where there is neither a requirement of materiality nor of *mens rea* militate toward its rejection, and it is not included here.

Conceivably, false oaths of this nature could constitute perjury under existing California law, *Penal Code Section 129*, but the magnitude of the impact of not providing a criminal penalty for false "private oaths" is impossible to assess because of the nature and structure of existing California provisions and the paucity of case law.

### **Section 1055. Unavailability of Defenses**

Certain defenses with respect to the taking of an oath and testimony consequent thereto are barred by Section 1055:

It is not a defense to any offense defined in this Chapter in which an oath is an element that:

- (1) the oath was administered or taken in an irregular manner; or
- (2) the authority or jurisdiction of the person administering the oath was defective, if the defect was excusable under any statute or rule or law; or
- (3) the statement was subject to a proper objection, whether or not such objection was made; or

- (4) the defendant mistakenly believed the falsification to be immaterial, where materiality of the statement is an element of the offense.

In general, these provisions are consistent with existing California law.<sup>24</sup>

### Section 1056. Corroboration

Section 1056, treating corroboration, is proposed tentatively at this time:

[No person shall be convicted of an offense defined in this chapter where proof of falsity rests solely upon contradiction by testimony of a single person.]

In general, this section is consistent with existing California law, see *People v. Roubus*, 65 Cal. 2d 213 (1966) (discussing the sufficiency of corroboration), and awaits a more comprehensive consideration of the requirement of corroboration in the criminal law.

### Other Provisions

A number of other relevant provisions, relating to false statements offenses, have not been included in proposed Chapter 3. The most important of these, and the reasons they have not been included, are:

1. Subornation of perjury. A special provision dealing with subornation of perjury—now embraced in Penal Code Section 127—has been omitted, as this offense is a superfluous restatement of accomplice liability.

2. Retraction. Present California law contains no special treatment of retraction, thus differing from the Model Penal Code and other recent codes. The formulations in these codes illustrate the difficulties which inhere in absolving a declarant of criminal liability for a false statement because of his subsequent admission of the falsity of his prior statement and his recantation thereof.

The *Model Penal Code, Proposed Official Draft, Section 241.1(4)*, provides:<sup>25</sup>

No person shall be guilty . . . if he retracted the falsification in the course of the proceeding in which

<sup>24</sup> Compare Sec. 1055(1) with *Pen. C. Secs. 121, 122*; *People v. Brown*, 125 Cal. App. 2d 83 (1954); *People v. Cohen*, 118 Cal. 74 (1897); *Fairbank v. Getchell*, 13 Cal. App. 458 (1910); *People v. White*, 122 Cal. App. 2d 551 (1954); see also *Pen. C. Sec. 119*.

Compare also, Sec. 1055(4) with *Pen. C. Sec. 123*.

<sup>25</sup> This is also the New York formulation, *Rev. Pen. Law Sec. 210.25*.



it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

The proposed Michigan Code requires that he "retracted his false statement in the course of the same proceeding in which it was made," and places the burden of going forward but not the burden of persuasion on the defendant. Revised Criminal Code, Section 4930.<sup>26</sup>

The purpose of these provisions is, like the defenses of abandonment and renunciation in attempt and conspiracy, to encourage truthfulness of statements by wiping out what would be criminal liability where the truth is later spoken and the falsity repudiated. The impact of such a provision of law upon truth-telling, either at the time of the first statement or at the time of the recantation, is questionable. Because of the concern that providing such an escape hatch might encourage falsity at the outset, the draftsmen of the Model Penal Code added the requirement that the retraction had to occur prior to the time the falsity "was or would be exposed." *Tentative Draft No. 8*, p. 129. The Michigan Penal Code Revisory Committee rejected this qualification on the grounds that it was "overly complex" and that it would "undermine . . . [the] beneficial purpose" of the section. Committee Commentary to Section 4930, p. 405. The Michigan Committee had the same objections to the requirement of the Model Penal Code that the false statement be retracted before the "falsification substantially affected the proceeding." *Ibid.* Moreover, inasmuch as retraction is considered as pertinent to all false statement offenses, some of which do not require materiality as an element of the offense, it is not clear how the requirement of "substantially affected the proceeding" is to be applied. Ostensibly, the Michigan solution would absolve of liability even if the declarant did not recant until after other witnesses and evidence had made it perfectly clear that he had lied during his initial testimony. If anything, such a solution would seem to encourage initial false testimony even more than was feared by the draftsmen of the Model Penal Code.

<sup>26</sup> Illinois may have provided a retraction defense in Sec. 31-2(a) of its Rev. Crim. C., although that provision seems more directed to the inconsistent statements problem: "Where the contradictory statements are made in the same continuous trial, an admission by the offender in that same continuous trial of the falsity of a contradictory statement shall bar prosecution therefor."



Given this diversity of views, the uncertainty of the gains and the difficulty of application, the proposed solution is not to change California law in this regard, and to leave retraction to be considered in the prosecutor's decision to prosecute, and, if there is a conviction, in the sentencing process. No solution to this problem seems quite satisfactory. The one proposed has the consequence of effecting no change in the law.

3. Inconsistent statements. Another issue which like, and somewhat related to, retraction, raises close questions of policy and scope is the treatment of two statements made by a declarant which are so inconsistent or incompatible that one must be false. With the exception of *Penal Code Section 118a*,<sup>27</sup> present California law makes no special provision for this situation and the prosecution must plead and prove the falsity of whichever statement it chooses to prosecute as well as the defendant's awareness that that statement was not true.

A number of modern codes have responded to the difficulties which this doctrine has placed upon the prosecution by attempting to relieve it of procedural and substantive requirements. Thus, Louisiana declares that it is perjury to swear to contradictory statements and puts the burden of persuasion on the defendant to prove that he honestly believed both statements to be true.<sup>28</sup> The more limited *Model Penal Code, Proposed Official Draft, Section 241.1(5)*,<sup>29</sup> provides:

<sup>27</sup> *Pen. C. Sec. 118a* provides that where any person swears in an affidavit that he will testify "in any particular manner, or to any particular fact" in pending or subsequent litigation, and the affidavit states as true material known to him to be false, that person is guilty of perjury. His subsequent testimony "contrary to any of the matters" in the affidavit is "prima facie" evidence of the falsity of the affidavit. According to the Code Commissioners' Notes, the object of this section was to punish those who instigate litigation by making false affidavits respecting the facts to which they will testify and was made necessary by the 1901 decision of the California Supreme Court in *People v. Simpton*, 133 Cal. 367, 65 Pac. 834. The impact upon this section of the repeal of *C. of Civil Proc. Sec. 1833* (defining "prima facie evidence") by *Sec. 602 of the Evid. C.* is not clear. Presumably, it requires the defendant only to introduce sufficient evidence to raise a reasonable doubt that the statement in the affidavit was false (see *Evid. C. Secs. 603, 604, 607, 630*), but does not affect the burden of the prosecution to plead and prove the defendant's *mens rea* at the time he swore to the affidavit.

<sup>28</sup> *La. Crim. C. Sec. 124*.

<sup>29</sup> The draftsmen of the *Model Penal Code* make very clear that *Sec. 241.1(5)* authorizes indictment and proof in the alternative, "without relieving the prosecution of the burden of proving *mens rea*." *Tent. Draft No. 6*, p. 134. The substantive impact of the section therefore seems to be the elimination of the requirement of corroboration to prove the falsity of the statement (see *P.O.D. Sec. 241.1(6)*), the inconsistent statement substituting for the corroborative evidence.

The text of the Michigan section is similar to that of *P.O.D. Sec. 241.1(5)*, *Mich. Rev. Crim. C. Sec. 4915*, but contains a provision—based on *N.Y. Rev. Pen. Law Sec. 210.20(3)*—to the effect that where perjury or false swearing (or perjury of different degrees) would be established by the making of the two statements, the defendant may be convicted of the lesser offense at the most. Illinois also provides that the prosecution need not specify in the indictment or information or establish at the trial which statement is false. *Ill. Rev. Crim. C. Sec. 32-2(b)*.

. . . [T]he prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

Quoting from the Commentary to *Model Penal Code, Tentative Draft No. 6*, the Michigan Penal Code Revisory Committee has stated the basic issue: "Anything done to give special legal effect to inconsistent swearings may operate as a law compelling consistency rather than truth. A witness may be warranted in refusing to testify at all in the second proceeding on the ground of self-incrimination; if he changes his story he sets up a criminal case against himself under the special statute dealing with inconsistent statements; if he yields to the pressure of the statute, he preserves his consistency but only by repeating what, in his view, is a previous false statement." Committee Commentary to *Section 4915*, pp. 400-1.

The decision of the Michigan Committee to adopt a special inconsistent statements provision was based essentially upon its belief "that encouragement of truthful testimony by a witness who changes his mind or decides to repent can most appropriately be handled under a special provision for retractions . . . [Moreover,] the prosecutor cannot simply rely on the introduction of the two statements; . . . he must also show that the defendant could not honestly have believed each statement to be true at the time it was made. The Committee feels that with this limitation imposed and a special section enacted for retractions, there is no justification for retaining the common-law rule . . . ." *Ibid.*

The rejection of the defense of retraction in this chapter makes the Michigan solution unacceptable, and, absent a readily available retraction defense, the concerns of the Michigan committee outweigh the desirability of facilitating the prosecution of perjury based on inconsistent statements. Accordingly, no change in present California law on this issue is here proposed.<sup>30</sup>

<sup>30</sup> The qualification to this statement is that *Pen. C. Sec. 118a* will be repealed. The paucity of reported appellate decisions on this section suggests that its repeal will not have a significant impact.

## Chapter 4. Offenses Against the Integrity of Official Proceedings

### Section 1100. Witness Intimidation

(1) A person is guilty of witness intimidation if, by any threat which would constitute a means of committing the offense of theft by extortion under this code if such threat were employed to obtain property, he:

(a) attempts to induce any person to refrain from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; or

(b) attempts to induce any person who has been or may be properly called as a witness in any official proceeding to give false testimony in, to withhold testimony or information from, or to fail to attend, any such proceeding.

(2) Witness intimidation is a felony of the third degree.

### Section 1101. Witness Bribery

(1) A person is guilty of witness bribery if he:

(a) offers, confers upon, or agrees to confer upon, any person any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to any offense; provided that it is an affirmative defense to a prosecution for witness bribery under this subsection that the benefit was honestly offered or conferred as restitution or indemnification for harm done in the circumstances of the offense; or

(b) offers, confers upon, or agrees to confer upon, any person who has been or may be properly called as a witness in any official proceeding any benefit as consideration for giving false testimony or information, for withholding testimony or information from, or for failing to attend, any such official proceeding.

(2) A person is guilty of witness bribery if he:

(a) solicits, accepts or agrees to accept any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; provided that it is an affirmative defense to a prosecution for witness bribery under this subsection that the benefit was honestly claimed as restitution or indemnification for harm done in the circumstances of the offense; or

(b) solicits, accepts or agrees to accept, in connection with any official proceeding to which he has been or may be properly called as a witness, any benefit as consideration for giving false testimony or information in, for withholding testimony or information from, or for failing to attend, any such official proceeding.

(3) Witness bribery is a felony of the third degree.

#### Section 1102. Witness Tampering

(1) A person is guilty of witness tampering if he attempts to induce any person to give false testimony in or to withhold testimony from any official proceeding to which he has been or may be properly called as a witness, or to fail to attend any official proceeding to which he has been lawfully called as a witness.

(2) Witness tampering is a misdemeanor.

#### Section 1103. Physical Evidence Falsification

(1) A person is guilty of physical evidence falsification if, believing that an official proceeding has been or is about to be instituted, he prepares, offers in evidence or uses any record, document or thing, knowing it to be false and with intent to mislead a public servant who is or may be engaged in the proceeding.

(2) Physical evidence falsification is a felony of the third degree.

#### Section 1104. Physical Evidence Destruction

(1) A person is guilty of physical evidence destruction if, believing that an official proceeding has been or



is about to be instituted, he destroys, conceals or removes any record, document or thing with intent to impair its availability in the proceeding.

(2) Physical evidence destruction is a misdemeanor.

#### **Section 1105. Juror Tampering**

(1) A person is guilty of juror tampering if, with intent to influence the outcome of an official proceeding, he communicates with a juror, except as may be authorized by law.

(2) Juror tampering is a misdemeanor.

#### **Section 1106. Juror Misconduct**

(1) A person is guilty of juror misconduct if, pending or in advance of any proceeding which is or may be brought before him as a juror, he agrees to decide for or against any party to the proceeding.

(2) Juror misconduct is a misdemeanor.

#### **COMMENT to Chapter 4**

Chapter 4 consolidates a number of offenses which, as the title of the chapter suggests, are designed to protect the integrity of official proceedings, as defined in Section 1000(7). Thus, the offenses in this chapter deal with witnesses, physical evidence and jurors. In the main, the proposed chapter reproduces the policy of existing California law, although particular aspects and the grading of particular offenses differ.

**Witnesses.** Sections 1100 and 1101 deal with witness intimidation and witness bribery, each of which is a felony of the third degree. Section 1102 is a more general witness tampering offense, not restricted to any specific tampering method, and is a misdemeanor.

#### **Section 1100. Witness Intimidation**

Section 1100 provides:

(1) A person is guilty of witness intimidation if, by any threat which would constitute a means of committing the offense of theft by extortion under this code if such threat were employed to obtain property, he



- (a) attempts to induce any person to refrain from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; or
- (b) attempts to induce any person who has been or may be properly called as a witness in any official proceeding to give false testimony in, to withhold testimony or information from, or to fail to attend, any such proceeding.

(2) Witness intimidation is a felony of the third degree.

Proposed Section 1100 is a somewhat expanded version of *Penal Code Section 136(1)(b)*, adopted in 1967, which provides:

Every person who willfully and unlawfully prevents or dissuades by means of force or threats of unlawful injury to person or property, any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison not less than one nor more than five years, or by both such fine and imprisonment in the county jail or in the state prison.

Section 136(1)(b) eliminated an anomaly in California law, in that *Penal Code Section 136½ and 137* had made bribery of witnesses a felony, but *Penal Code Section 136* (now *Penal Code Sections 136(1)(a)*) made it merely a misdemeanor to willfully prevent or dissuade a person from being a witness. As stated, proposed Section 1100 restates and expands the provisions of *Penal Code Section 136(1)(b)*, and is generally consistent with the *Model Penal Code, Proposed Official Draft Section 241.6(1)*, and *Michigan Revised Criminal Code Section 5015*, although New York apparently still makes it a felony only to bribe witnesses and does not include threats in the felony category.

Three other aspects of Section 1100, which recur in this chapter, warrant discussion. The first is the special designation in Subsection (a) of threats which suppress re-

ports or information about law violations, thus preventing the official proceedings from being initiated. Although there is no general duty in Anglo-American law to report the commission of an offense, coercive prevention of such reports merits the relatively severe penalty provided here.

The second is the inclusion in Subsection (b) of "testimony," which, under the definition in Section 1000(9), comprehends not only oral testimony but also written material which may be offered by a witness.

The third issue is created by the inevitable overlap between the perjury and false swearing offenses of Chapter 3, Sections 1030-1056, and Sections 1100, 1101 and 1102, which prohibit attempts to induce witnesses to testify falsely, conduct which in some circumstances would amount to attempts to commit, solicitation of, or complicity in the false swearing offense. Where, however, the threat, the offer to bribe, or the other form of inducement is unsuccessful, it may not go so far as to constitute those inchoate or accessorial offenses.

Inasmuch as Sections 1100 and 1101 are both graded as felonies of the third degree—the same as perjury—no serious distortion of the grading scheme is produced in this respect. In some circumstances, Section 1102, witness tampering, a misdemeanor, could be a lesser offense included within Section 1030, perjury.

### **Section 1101. Witness Bribery**

With qualifications to be noted, Section 1101 is generally consistent with present California law, particularly *Penal Code Section 136½* (bribe to dissuade witness from attending), *Penal Code Section 137* (bribe to influence testimony), and *Penal Code Section 138* (taking or offering to take bribes by witness). Each of the California provisions is a felony; proposed Section 1101 is a felony of the third degree.

(1) Subsection (1) of Section 1101 provides:

A person is guilty of witness bribery if he:

(a) offers, confers upon, or agrees to confer upon, any person any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to any offense; provided

that it is an affirmative defense to a prosecution for witness bribery under this subsection that the benefit was honestly offered or conferred as restitution or indemnification for harm done in the circumstances of the offense; or

- (b) offers, confers upon, or agrees to confer upon, any person who has been or may be properly called as a witness in any official proceeding any benefit as consideration for giving false testimony or information, for withholding testimony or information from, or for failing to attend, any such official proceeding.

The broad scope of Subsection (b) is made even more comprehensive by the inclusion in Subsection (a) of the bribery of an "informant." Modelled after the Model Penal Code, this section goes beyond present California law.<sup>31</sup> Once again, the interest in protecting the free flow of information about the commission of offenses warrants extending the reach of the provision to this preliminary stage of the official proceedings.

- (2) Subsection (2) of Section 1101 provides:

A person is guilty of witness bribery if he

- (a) solicits, accepts or agrees to accept any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; provided that it is an affirmative defense to a prosecution for witness bribery under this subsection that the benefit was honestly claimed as restitution or indemnification for harm done in the circumstances of the offense; or
- (b) solicits, accepts or agrees to accept, in connection with any official proceeding to which he has been or may be properly summoned as a

<sup>31</sup> The Comments to the Model Penal Code's predecessor to *Sec. 241.6* cited the above California Penal Code provisions and went on to state that "The section goes beyond present law in covering 'informants' as well as witnesses." *Tent. Draft No. 8*, p. 121. *Pen. C. Sec. 136* refers to "any trial, proceeding, or inquiry, authorized by law;" *Pen. C. Sec. 136½* refers to "any trial or other judicial proceeding." *Pen. C. Sec. 137* has no specific referent and has been interpreted to apply when no cause is pending. *People v. McAllister*, 99 Cal. App. 37 (1929). *Gov. C. Sec. 9414* makes an attempt to cause a witness not to appear before a legislative committee a misdemeanor.

witness, any benefit as consideration for giving false testimony or information in, for withholding testimony or information from, or for failing to attend, any such official proceeding.

This subsection is the counterpart of Subsection (1), imposing penal sanctions upon the one who receives the bribe. The major novel feature of these provisions is the inclusion of what is essentially the crime of compounding and its defense at *this* point rather than in an independent section. This treatment of compounding is both new to California law and also different from that of other codes.

There is no general Anglo-American legal duty requiring that a victim or a witness report the commission or suspected commission of an offense to law enforcement officers.<sup>32</sup> And, as the President's Commission of Law Enforcement and Administration of Justice reiterated, "... for the Nation as a whole there is far more crime than ever is reported." *The Challenge of Crime in a Free Society*, p. v. Despite this lack of duty to report, there has persisted an aversion to the threat by a victim or witness to report the offense or initiate criminal prosecution which finds expression in the typical extortion statute, e.g., *Penal Code Sections 518, 519(2), (3)*. Reaching conduct which might not be covered by extortion provisions, the crime of compounding condemns the receipt of consideration for failure to report the commission of an offense.<sup>33</sup>

On the merits of making criminal receipt of consideration not to report commission of an offense, there appear to be no persuasive reasons why non-victims, i.e., witnesses, should be immune from prosecution where their silence has been purchased. Dangers of extortion coupled with the undesirability of encouraging nondisclosure seem clearly to outweigh whatever arguments could be mustered to leave the matter to the private disposition of the parties. Indeed, enforcement of existing statutes shows the balance that has been struck. "Prosecution is

<sup>32</sup> The common law crime of misprison of felony is virtually nonexistent, see *Model Pen. C., Tent. Draft No. 9*, p. 209, although there has been some recent interest: *Sykes v. Director of Public Prosecutions*, 3 W.L.R. 371 (1961); *Regina v. Criminals*, (1959) Vict. Rep. 270; Goldberg, *Misprison of Felony: An Old Concept in a New Context*, 52 ABAJ 148 (1966). The only existing California statute is *Pen. C. Sec. 38*, misprison of treason.

<sup>33</sup> See, generally, *Model Pen. C., Tent. Draft No. 9*, p. 205. The California compounding statute, *Pen. C. Sec. 153*, see *infra* n. 34, includes withholding evidence.



almost invariably against persons who, being merely witnesses of an offense with which they have no private concern as victim or otherwise, take money for a promise not to report or testify." *Model Penal Code, Tentative Draft No. 9*, p. 207.

The difficult problem is the treatment of arrangements between the victims of crime and the alleged criminals, for there is an obvious overlapping in many crimes between the private injury and the public wrong. So, too, there is the very practical problem of the difficulty of prosecuting an offense with a reluctant victim, who is usually the principal if not the complaining witness.

Present California law resolves these problems by making compounding—agreeing for a consideration not to report an offense—a crime, with punishment varying with the seriousness of the offense which has been compounded or compromised. *Penal Code Section 153*.<sup>34</sup> Certain misdemeanors may be compromised by the person injured pursuant to a statutorily prescribed judicial proceeding, *Penal Code Sections 1377-9*, and where judicial approval of the compromise is obtained, prosecution for the original offense must be dismissed.<sup>35</sup>

The Model Penal Code provision is quite different. Compounding is a misdemeanor, but it is an affirmative defense with respect to any offense that the amount paid did not exceed that which the victim believed due him as

<sup>34</sup> Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the state prison for life.

2. By imprisonment in the state prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the state prison for any other term than for life;

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

<sup>35</sup> *Sec. 1377*. When the person injured by an act constituting a misdemeanor has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office;

2. Riotously;

3. With an intent to commit a felony.

*Sec. 1378*. If the person injured appears before the court in which the action is pending at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

*Sec. 1379*. No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this chapter.



restitution or indemnification. *Proposed Official Draft Section 242.5.*<sup>36</sup> There is no provision for dismissal of the original charge.<sup>37</sup>

The proposed sections include as witness bribery—a felony of the third degree—conduct which would normally be comprehended by the compounding statute. As such, they provide a greater penalty than that which appears in the other codes and, in a number of situations, than now appears in California law. This seemingly harsh treatment is militated by the classification of witness intimidation, witness bribery and extortion as felonies of the third degree. No social value seems to be served by permitting criminal offenders to “buy their witnesses off,” nor, on the other hand, by encouraging witnesses to profit financially from their fortuitous knowledge of the criminal conduct.

As has been stated, different considerations come into play when the victim “negotiates a settlement” of his loss. It would undoubtedly come as a surprise to the average citizen to be told that he had committed a crime by agreeing not to report an offense affecting him in return for restitution of his estimate of his injury or damage to his property. For that reason, the sections include an affirmative defense like that of the Model Penal Code and New York. It should be noted that the Michigan Penal Code Revisory Committee considered and rejected the inclusion of such a defense. After reviewing at length the reasons to support the defense, it concluded:

. . . the compounding provision, although rarely if ever used against the reimbursed victim, is frequently employed as a threatening device to retain the victim's continued cooperation in the prosecution of the crime. In other words, although the prosecutor

<sup>36</sup> “A person commits a misdemeanor if he accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense. It is an affirmative defense to prosecution under this Section that the pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense.”

<sup>37</sup> New York is similar to the Model Penal Code, *Rev. Pen. Law Sec. 215.45*, and Wisconsin provides a comparable defense, *Stats. Sec. 946.67(2)*. Minnesota excepts “a case where a compromise is allowed by law.” *Crim. C. Sec. 609.42 Subd. 1(6)*. *Ill. Rev. Crim. C. Sec. 32-1* and *Mich. Crim. C. Sec. 4530* make compounding generally criminal, but provide no defense. As do some fifteen states, see *Model Pen. C., Tent. Draft No. 9*, p. 205. Louisiana limits the scope to compounding a felony, *Crim. C. Sec. 1313*. Louisiana provides a penalty (two years) greater than that for a misdemeanor.

will not in fact prosecute for compounding, he will frequently warn the reimbursed victim that his decision to forgo prosecution, to refuse to be a witness, etc., may open him up to a charge of compounding. This warning, it is argued, will often be enough to insure continued cooperation. The Committee in the end decided that the practical necessity for a "warning device" of this sort justified retention of the compounding provision in its present form, without a "victim-reimbursement" exception. Committee Commentary, p. 340.

Measured against the reasons supporting the availability of the defense, the stated desirability of providing the prosecution with a "threatening weapon" on the assumption that it will not be used does not seem sufficient to reject the defense.

Section 1101(2)(a) dispenses with the present California requirement of judicial approval of a compromise, with its consequent legitimization of the compromise and dismissal of the basic charge. It is not clear whether this requirement encourages or discourages compounding, assuming, what may not be the fact, that its availability is generally known. Although prosecutors will normally not prosecute where the victim has been satisfied through restitution or other payment, the power to undertake such prosecutions exists under the Model Penal Code and other statutes.<sup>38</sup> Thus, it would seem that the alleged offender would stand to gain more in California through an agreement with a victim than elsewhere. And, the greater the apparent benefit to the alleged criminal, the greater the possibility of extortion.<sup>39</sup> The draftsmen of the Model Penal Code rejected requiring judicial approval, not only because "such procedures are rarely invoked," but also because concomitant "public exposure, official inquiry and chance of prosecution" tend not to serve the purpose of the alleged criminal in trying to compound the crime in the first place. *Tentative Draft*

<sup>38</sup> Indeed, Wisconsin (*Stat. Sec. 946.67(3)*) expressly provides that no promise "shall justify the promisor in refusing to testify or to produce evidence against the alleged criminal when subpoenaed to do so."

<sup>39</sup> In *People v. Beggs*, 178 Cal. 79, 172 Pac. 152 (1918), the court stated that even if the defendant to a charge of extortion under *Pen. C. Sec. 518* had demanded no more than his actual theft loss, he would nonetheless be guilty of extortion.

No. 9, p. 204.<sup>40</sup> Although the question may be a close one, the sections omit the existing California procedure, leaving this aspect of the administration of the criminal law to private disposition, recognizing of course that it applies only to those offenses for which there are restitutionary equivalents, that is, to the basically "private" offences.<sup>41</sup>

## Section 1102. Witness Tampering

Section 1102 is a general prohibition of improper attempts to affect witnesses:

A person is guilty of witness tampering if he attempts to induce any person to give false testimony in or to withhold testimony from any official proceeding to which he has been or may be properly called as a witness or to fail to attend any official proceeding to which he has been lawfully called as a witness.

This section is a generalized statement of the policy contained in present *California Penal Code Sections 133* (deceiving a witness)<sup>42</sup> and *136* (preventing or dissuading a witness from attending),<sup>43</sup> and like them grades the offenses a misdemeanor.<sup>44</sup>

Unlike Sections 1100 and 1101, which can be violated only by certain prohibited kinds of inducements, threats or bribery, Section 1102 is not limited with respect to the means of inducement. Consequently, the prohibited objectives are more narrowly defined in Section 1102 than in Sections 1100 and 1101, which make criminal conduct

<sup>40</sup> *Pen. C. Secs. 1377-9* have been interpreted not to require the presence of the district attorney in the compounding hearing whereby judicial approval can be obtained which will bar subsequent prosecution, *People v. O'Rear*, 220 Cal. App. 2d Supp. 927 (1963). This result seems quite inconsistent with the public interest in the enforcement of the criminal law, above and beyond the private injury, which is the justification for the judicial proceeding in the first place.

<sup>41</sup> In *People v. O'Rear*, *supra*, n. 40, the defendant was charged criminally with a violation of the "hit-and-run" provision of *Veh. C. Sec. 20002(a)*. The defendant had paid the person whose car had been damaged and the trial court granted his motion to dismiss under the authority of the judicial approval provisions of *Pen. C. Secs. 1377-9*. Holding that the gravamen of the offense defined in *Sec. 20002(a)* is the failure to stop and make the necessary report and not the injury to the private citizen, the Appellate Department held that the offense could not be compromised under *Pen. C. Sec. 1377*.

<sup>42</sup> *Sec. 133*. Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

<sup>43</sup> *Sec. 136*. Every person who willfully prevents or dissuades any person who is or may become a witness from attending upon any trial, proceeding, or inquiry, authorized by law, is guilty of a misdemeanor.

<sup>44</sup> This is the grading of the Model Penal Code parallel provision, *P.O.D. Sec. 241.6(1)*, *Mich. Rev. Crim. C. Sec. 5020* and *N.Y. Rev. Pen. Law Sec. 215.10*.

which might be lawful if engaged in unaffected by coercion or bribery, *e.g.*, failure to report an offense. To constitute a violation of Section 1102, there must be an element of illegality in the objective of the inducement: "false testimony,"<sup>45</sup> "withhold testimony or information from," or failure to attend a proceeding to which the witness "has been lawfully summoned."

### Section 1103. Physical Evidence Falsification

Chapter 3, Perjury and Related Offenses, treats false statements made in a variety of contexts and circumstances.<sup>46</sup> Insofar as is relevant, this Chapter 4, Offenses Against the Integrity of Official Proceedings, has been concerned with pressure or persuasion employed by one person upon another who is or may become a witness to affect his testimony or submission of evidence at an official proceeding, Sections 1100 (witness intimidation), 1101 (witness bribery), and 1102 (witness tampering). Section 1103, physical evidence falsification, is directed at the falsification of physical evidence. It is a felony of the third degree and provides.

A person is guilty of physical evidence tampering if, believing that an official proceeding has been or is about to be instituted, he prepares, offers in evidence or uses any record, document or thing, knowing it to be false and with intent to mislead a public servant who is or may be engaged in the proceeding.

The subject matter is substantially comprehended in present *California Penal Code Sections 132 and 134*.<sup>47</sup> *Section 132*, a felony, prohibits offering in evidence, as genuine or true, any written instrument, knowing it to have been forged, fraudulently altered or antedated.<sup>48</sup> *Section 134*, also a felony, prohibits preparing any false or antedated writing "or other matter or thing," with

<sup>45</sup> The overlap between Sec. 1102 and perjury has been discussed *supra*.

<sup>46</sup> All the offenses in Chapter 3 are concerned with statements under oath or "under penalty," Secs. 1031, 1040, 1042, except Sec. 1041, which in Subsec. (a) deals with false written statements, and in Subsec. (b) deals with false physical objects, the type of material also dealt with in Sec. 1103.

<sup>47</sup> *Pen. C. Sec. 133*, making it a misdemeanor to trick a witness by deceit or by showing him a false writing so that his testimony is affected, is comprehended by proposed Sec. 1102, witness tampering.

<sup>48</sup> *Sec. 132*. Every person who upon trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered or antedated, is guilty of a felony.



intent that it be produced for any false purpose, as genuine or true.<sup>49</sup>

In general, proposed Section 1103 is similar to, although more comprehensive than, the present Penal Code sections.<sup>50</sup> One important aspect, however, is that of grading the offense a felony of the third degree, raising two significant issues.

The first issue is posed by Subsection (a), the prohibition against preparing, offering or using any false record, knowing it to be false and with intent to mislead a public servant. Characterizing this type of conduct as a felony of the third degree equates it in severity to the crime of perjury or attempt to commit perjury, thus making it a more serious offense than unsworn falsification, a misdemeanor.<sup>51</sup> Although Section 1103 contains elements which are common to perjury and to unsworn falsification, grading it at the perjury level is warranted because of its emphasis on the integrity of "official proceedings," an element which is not present in the offense of unsworn falsification. In this respect the grading does not differ from present California law.<sup>52</sup>

Another point of potential conflict created by making Section 1103 a felony of the third degree has to do with its relation to Section 1102, witness tampering, a misdemeanor.<sup>53</sup> In relevant part, witness tampering proscribes attempts to induce a witness to give false testimony in or to withhold testimony from an official proceeding,

<sup>49</sup> *Sec. 134.* Every person guilty of preparing any false or antedated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of a felony.

<sup>50</sup> *E.g.*, Sec. 1103 applies to non-documentary evidence, whereas *Pen. C. Sec. 132* is limited to written instruments; *Pen. C. Sec. 135* requires that the material destroyed must be "about to be produced in evidence," see *People v. Edgar*, 60 Cal. 2d 171 (1963), whereas Sec. 1103 requires only a belief that a proceeding is pending or is about to be instituted. It is not clear whether Sec. 1103 will effect a change in the *mens rea* requirement of *Pen. C. Secs. 132 and 134*. Cf., *People v. Horowitz*, 70 Cal. App. 2d 675 (1945).

*Pen. C. Sec. 156* provides a ten year maximum term of imprisonment to "fraudulently produce an infant, falsely pretending [that it is entitled to inherit property], with intent to intercept the inheritance . . ." Inasmuch as the infant will not be able to testify, it will properly fall within the category of "thing" in Sec. 1103. Moreover, in practically all such cases, the supporting testimony will be perjurious under Sec. 1030.

<sup>51</sup> *Sec. 1041.* A person is guilty of unsworn falsification if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

- (a) any written false statement of his own which he does not then believe to be true; or
- (b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

<sup>52</sup> Illustrative comparative treatments include: Michigan, one year imprisonment, *Crim. C. Sec. 5045(1)(b)*; New York, four years' imprisonment, *Rev. Pen. Law Sec. 21540*; Model Penal Code, misdemeanor, *P.O.D. Sec. 241.7*.

<sup>53</sup> Witness tampering is the attempt "to induce any person to give false testimony in or to withhold testimony from . . . or to fail to attend any official proceeding to which he has been lawfully called as a witness."



testimony being defined in Section 1000(9) to include "oral or written statements, documents or any other material which may be offered by a witness in an official proceeding." Section 1103, of course, prohibits the falsification or destruction of any "record, document or thing."

The essential difference between the two sections which is thought to warrant the difference in grading is the proximity to the ultimate harm which the different types of conduct accomplish. Section 1102 is aimed at efforts to induce others to act unlawfully, interposing another human agent as a barrier to the accomplishment of the objective. Where that objective is accomplished the inducer may of course be guilty of a more serious offense, *e.g.*, perjury, through the complicity route. On the other hand, Section 1103 is directed at conduct over which the actor has full control, thus presenting a graver danger to the integrity of the official proceeding, and thus in turn warranting the more severe sanction as a deterrent.

#### **Section 1104. Physical Evidence Destruction**

Section 1104 deals with another type of interference with physical evidence, that of its destruction. It provides:

A person is guilty of physical evidence destruction if, believing that an official proceeding has been or is about to be instituted, he destroys, conceals or removes any record, document or thing with intent to impair its availability in the proceeding.

Unlike Section 1103, physical evidence falsification, Section 1104, is a misdemeanor. In this respect it is similar to present *Penal Code Section 135*,<sup>54</sup> whose policy it largely reproduces. Although there are arguments to the contrary, there appear to be no pressing reasons for an increase in the level of the penalty. It should be pointed out, however, that the thrust of Section 1104 is at those situations where documents are concealed or destroyed while a proceeding is pending or is on the verge of being instituted. It is not intended to cover on-the-scene destruction of evidence.

<sup>54</sup> *Sec. 135.* Every person who, knowing that any book, paper, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

**Jurors.** The inclusion of "juror" in the definition of "public servant" in Section 1000(2) makes the provisions of Chapter 2, Bribery and Other Unlawful Influence, applicable to jurors. Thus, it is a felony of the third degree to bribe a juror (Section 1010) or to threaten him (Section 1015). It is a misdemeanor to give him a pecuniary benefit for having performed as a juror (Section 1020). In parallel fashion, it is a felony of the third degree for a juror to receive a bribe (Section 1011), and a misdemeanor for him to receive an unlawful gratuity (Section 1021). The only significant respect in which these provisions differ from existing California law is the prohibition in Sections 1020 and 1021 against giving and receiving unlawful gratuities for having performed a juror's duties,<sup>55</sup> and the considerations which merit applying these sanctions to "public servants" generally seem equally pertinent to jurors.

Section 1105 and 1106 contain other protections of the jury process, the former—juror tampering—directed at insulating the jury from improper communications, the latter—juror misconduct—directed at assuring that there are no improper advance commitments by jurors. Both are misdemeanors and provide:

1105. A person is guilty of juror tampering if, with intent to influence the outcome of an official proceeding, he communicates with a juror, except as may be authorized by law.

1106. A person is guilty of juror misconduct if, pending or in advance of any proceeding which is or may be brought before him as a juror, he agrees to decide for or against any party to the proceeding.

The principal changes these provisions make in existing California law are two.

The first is a reduction of the penalty. *Penal Code Sections 95 One and 95 Two* make the conduct proscribed in Section 1105 subject to imprisonment for five years, as contrasted with the misdemeanor penalty of Section 1105. *Penal Code Section 96 One* makes the conduct proscribed in Section 1106 also subject to imprisonment for five years; violation of Section 1106 is a misdemeanor.

<sup>55</sup> See *Pen. C. Secs. 92, 93, 95 Three and 95 Four*. *Pen. C. Sec. 94* prohibits the payment of gratuity or rewards to judicial officers, and *Pen. C. Sec. 94.5* prohibits receipt of money for performance of marriage ceremonies by judges. These provisions do not apply to jurors.

This reduction in penalty seems militated by the general grading structure of this code, particularly in the light of the grading of bribery and threatening of jurors as a felony of the third degree, and is consistent with the other recently adopted codes.<sup>56</sup>

The second major change is the omission of present *California Penal Code Section 96 Two*, making it a crime, subject to five years' imprisonment, for a juror to "willfully and corruptly [permit] any communication to be made to him, or [to receive] any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings."

*Penal Code Section 96 Two* appears to be the obverse of *Penal Code Section 95 One and Two*, i.e., it makes it criminal for a juror to receive those communications which *Penal Code Section 95 One and Two* make it criminal for another to convey to him. But the precise intended scope and purpose of *Section 96 Two* are not clear. The only reported case, *People v. King*, 218 Cal.App.2d 602, 32 Cal. Rptr. 479 (1963), involved both a count of charging a juror with having solicited a bribe (a violation of *Section 96 One*), and another alleging willfully and corruptly permitting the communication (a violation of *Section 96 Two*), where essentially the same conduct was charged for both counts, so that it is not at all clear what the second count added. Significantly, the definition of "corruptly" in *Section 96 Two* is derived from *Penal Code Section 7(3)*—" 'corruptly' imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person." This is substantially the definition of "benefit" in *Section 1000(3)*; accordingly, the conduct proscribed in present *Penal Code Section 96* will in most cases fall within an attempt of a juror to receive a bribe or to solicit one.

Retaliation. Another omitted provision which warrants mention is that which provides criminal penalties for retaliation upon witnesses or jurors. Such a provision appears in the Federal Criminal Code, 18 USC Sections

<sup>56</sup> E.g., Ill. Rev. Crim. C. Sec. 32.4; Mich. Rev. Crim. C. Sec. 5040; Minn. Crim. C. Sec. 609.515; N. Y. Rev. Pen. Law Secs. 215.25, 215.30. Cf., Model Pen. C. P.O.D. Sec. 240.2(1)(d) (private address to any public servant is a misdemeanor).

1503, 1505<sup>57</sup> and in the *Model Penal Code Proposed Official Draft Sections 240.4* (retaliation against public servants, including jurors) and *241.6(2)* (retaliation against witnesses and informants).<sup>58</sup> Violation of the Federal provision is punishable with a maximum of five years' imprisonment; violation of the Model Penal Code provisions is a misdemeanor.

Present California law contains no such provision,<sup>59</sup> nor do the recently adopted codes. To the extent that the retaliation is otherwise criminal, characterizing the conduct as a misdemeanor, as does the Model Penal Code, adds little. And, to bring the special provision into play, as again does the Model Penal Code, where the act is "unlawful" raises serious questions of scope and definition.<sup>60</sup> At the same time, aggravating the penalty for what might be the misdemeanor of assault to that of a felony of the third degree, as does the Federal Penal Code, scarcely seems consistent with the general grading structure of this code. In short, as was stated in the discussion of this problem with respect to Chapter 2, Bribery and Other Unlawful Influence, "No persuasive reason appears for a change in this regard."

<sup>57</sup> 18 USC Sec. 1503 provides, in relevant part:

Whoever . . . injures any party or witness in his person or property on account of his attending or having attended . . . court . . . or on account of his . . . having testified to any matter . . . or injures any . . . grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any . . . officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties . . .

18 USC Sec. 1505 provides similar penalties for injuring a party or witness on account of his appearance before an agency or Congressional Committee.

<sup>58</sup> Both P.O.D. Secs. 240.4 and 241.6(2) provide that it is a misdemeanor to "harm another by any unlawful act in retaliation for anything lawfully done in [his official] capacity."

<sup>59</sup> Elec. C. Sec. 29131 prohibits retaliation against a person for having voted or refrained from voting. This section would not be affected by the proposed code.

<sup>60</sup> See, e.g., the discussion of this problem in the Comment to Proposed Sec. 208.11, the predecessor of P.O.D. Sec. 240.2, in *Model Pen. C. Tent. Draft No. 8*, pp. 107-9, and the resolution in the P.O.D., pp. 197-8.



## **Chapter 5. Interference with Government Operations and Law Enforcement**

[Chapter 5, Interferes with Government Operations and Law Enforcement, will contain a series of offenses treating particular aspects of the conduct subsumed in the title of the chapter: public records tampering, hindering apprehension, false alarms, false reports, impersonating a public servant, resisting arrest, obstructing fire control operations, obstructing government operations and refusing to aid a peace officer (or fireman). These offenses are in the drafting process and will be presented separately.]



## Chapter 6. Escape and Related Offenses

### Section 1300. Aggravated Escape

(1) A person is guilty of aggravated escape if he:

(a) escapes from custody within a detention facility;

(b) escapes from custody with the use or threat of use of force or violence upon another person or by any means creating a substantial risk of physical injury to another person.

(2) Aggravated escape is a felony of the third degree.

### Section 1301. Escape

(1) A person is guilty of escape if he escapes from custody.

(2) Escape is a misdemeanor.

### Section 1302. Assisting Escape

(1) A public servant concerned in detention is guilty of assisting escape if he knowingly assists an escape.

(2) Assisting escape is a felony of the third degree.

### Section 1303. Providing Escape Implements

(1) A person is guilty of providing escape implements if he knowingly introduces any escape implement within a detention facility, with intent to cause or assist the escape of any person confined therein.

(2) A person confined within a detention facility is guilty of providing escape implements if he knowingly makes, obtains or possesses any escape implement with intent to effect an escape of himself or any other person.

(3) Providing escape implements is a felony of the third degree.

### Section 1307. Aggravated Failure to Appear

(1) A person is guilty of aggravated failure to appear when, having been released from custody, with bail or upon his own recognizance, by court order or by other lawful authority upon condition that he subsequently

appear personally upon a charge of a felony, he fails without lawful excuse to appear at the time and place which have been lawfully designated for his appearance.

(2) Aggravated failure to appear is a felony of the third degree.

### Section 1308. Failure to Appear

(1) A person is guilty of failure to appear when, having been released from custody, with bail or upon his own recognizance, by court order or by other lawful authority upon condition that he subsequently appear personally upon a charge of a misdemeanor [or petty misdemeanor], he fails without lawful excuse to appear at the time and place which have been lawfully designated for his appearance.

(2) Failure to appear is a misdemeanor.

### COMMENT to Chapter 6.

The offenses defined in Chapter 6 provide penalties for those who attempt to evade official detention or confinement. Present California law is highly prolix with respect to these matters. There are some seventeen California provisions dealing with escape in the Penal <sup>61</sup> and the Welfare and Institutions <sup>62</sup> Codes. Furnishing implements for escape is treated in eight Penal Code sections <sup>63</sup> and one section in the Business and Professions Code.<sup>64</sup> The California proliferation is the result of particularization of institutions and conduct, with amendments and new sec-

<sup>61</sup> *Pen. C. Sec. 107* (escape from training school, reformatory or county hospital); *Pen. C. Sec. 109* (escape from public training school or reformatory); *Pen. C. Sec. 2042* (escape from California Vocational Institution); *Pen. C. Sec. 3044* (escape from prison—parole eligibility); *Pen. C. Sec. 3059* (parolee leaving state); *Pen. C. Sec. 3080* (parolee leaving country); *Pen. C. Sec. 4133* (boundaries of industrial farm for purposes of defining escape); *Pen. C. Sec. 4530* (escape from custody of prison officials); *Pen. C. Sec. 4532* (escape from county or city jail, industrial farm, industrial road camp or county road work); *Pen. C. Sec. 4533* (connivance by prison guard in escape); *Pen. C. Sec. 4534* (assisting prisoner whose parole has been revoked to escape); *Pen. C. Sec. 4550* (rescue of prisoner from prison, prison road camp, jail or county road camp, officer or person having escapee in lawful custody).

<sup>62</sup> *W. & I. C. Sec. 1152* (aiding escape from Youth Authority institution); *W. & I. C. Sec. 1257* (escape from California Youth Training School); *W. & I. C. Sec. 1768.7* (penalty for escape from Youth Authority institution or facility); *W. & I. C. Sec. 3002* (escape from confinement as narcotics addict); *W. & I. C. Sec. 5522* (escape from county facility or state hospital); *W. & I. C. Sec. 6721* (aiding a patient of a state hospital to escape).

<sup>63</sup> *Pen. C. Sec. 110* (public training school or reformatory); *Pen. C. Sec. 171a* (contraband into reformatory); *Pen. C. Sec. 2772* (contraband into prisoners working in prison or state road camp); *Pen. C. Sec. 2790* (contraband into prison); *Pen. C. Sec. 4502* (possession of deadly weapons in state prison, road, forestry camps or farms); *Pen. C. Sec. 4535* (escape implements into prison or jail); *Pen. C. Sec. 4573* (contraband into prisons, etc.); *Pen. C. Sec. 4573.5* (unauthorized drugs into prison, etc.); *Pen. C. Sec. 4573.6* (possession of unauthorized drugs in prison, etc.); *Pen. C. Sec. 4574* (bringing deadly weapons into prison or other institutions).

<sup>64</sup> *Bus. & Prof. C. Sec. 25603* (intoxicants into prisons, etc.).

tions responsive to immediately preceding events and perceived gaps. Proposed Chapter 6 treats these matters in a more generalized fashion, thereby reducing the number of applicable provisions and consequently the overlapping and inconsistencies.

### **Sections 1300, 1301. Aggravated Escape; Escape**

Sections 1300 and 1301 are the two principal substantive provisions treating the conduct subsumed under escape. They provide:

1300. (1) A person is guilty of aggravated escape if he:

- (a) escapes from custody within a detention facility; or
- (b) escapes from custody with the use or threat of use of force or violence upon another person or by any means creating a substantial risk of physical injury to another person.

(2) Aggravated escape is a felony of the third degree.

1301. (1) A person is guilty of escape if he escapes from custody.

(2) Escape is a misdemeanor.

Both Section 1300 and Section 1301 depend upon the definition of "custody" and "detention facility." These definitions are:

1000(13). Except as provided in Subsection 1000(15), "custody" means

- (a) restraint by a public servant pursuant to an order of a court [other than an arrest warrant] or a duly authorized administrative agency;
- (b) restraint by a peace officer or other person concerned in detention
  - (i) pursuant to an arrest with or without an arrest warrant, during or subsequent to the official booking of the person arrested; or
  - (ii) in a detention facility.

1000(14). Except as provided in Subsection 1000(15), "detention facility" means

- (a) any place used for confinement, pursuant to an order of a court, of
  - (i) persons charged with or convicted of an offense;
  - (ii) persons against whom judicial proceedings leading to involuntary confinement have begun, are pending or have concluded;
  - (iii) persons against whom extradition orders are sought to have been obtained; or
  - (iv) persons otherwise confined pursuant to court order;
- (b) any place to which a person ordered confined to a detention facility pursuant to Subsection (a) has been or is being lawfully taken for purposes of labor, court appearance, recreation, medical or hospital care, transit, or similar purpose.

1000(15). Neither "custody" nor "detention facility" includes release on parole, probation or other correctional supervision, or constraint incident to release, with bail or on one's own recognizance, by court order or by other lawful authority upon condition of subsequent personal appearance at a designated time and place.

### **(1) Section 1300. Aggravated Escape**

In gross terms, Section 1300 specifies the factors which aggravate the misdemeanor of escape to a felony of the third degree. There is a wide range of factors which would be deemed relevant in determining the aggravation: manner of the escape, original crime, institution from which there is an escape. Present California law employs all of these factors, and the penalties for escape range from life imprisonment,<sup>65</sup> ten years,<sup>66</sup> seven years,<sup>67</sup> five years,<sup>68</sup> and one year and one day.<sup>69</sup>

<sup>65</sup> *Pen. C. Sec. 4530(a)* (escape by use of force by prisoner).

<sup>66</sup> *Pen. C. Sec. 107* (escape from public training school by felon); *Pen. C. Sec. 4532(a)* (escape of misdemeanant by force and violence).

<sup>67</sup> *W. & I. C. Sec. 3002* (escape following commitment as narcotics addict).

<sup>68</sup> *Pen. C. Sec. 2042* (escape from Deuel); *Pen. C. Sec. 4133* (escape from county industrial camp); *Pen. C. Sec. 4532(a)* (escape of misdemeanant); *Pen. C. Sec. 4530(b)* (escape by prisoner); *W. & I. C. 1257* (escape from California Youth Training School); *W. & I. C. Sec. 5522* (escape of mentally disordered sex offender from state hospital).

<sup>69</sup> *Pen. C. Sec. 4532(a)* (escape of misdemeanant).



Proposed Section 1300 combines these factors into three general provisions.

(a) Detention facility. Section 1300(1) makes escape from "custody within a detention facility" a felony of the third degree. The definition of detention facility in Section 1000(14) includes all places to which persons are regularly sent, pursuant to court order, for involuntary confinement. It includes as well all places in which persons who have been committed to detention facilities may be located, even though outside the facility, as, for example, for court appearance, recreation, labor and transportation. Section 1000(15) expressly excludes persons who have been released on parole, probation or other at-large custodial supervision, or on bail on their own recognizance.

The rationale underlying this use of custodial institutions as the dividing line between felony and misdemeanor is the need for the security of such institutions. The fact that under the correctional system in California, there is no total correspondence between a particular institution and a single type of person who may be confined therein militates toward the generic inclusion of all such institutions. A county jail may contain felons; a civil facility, like Atascadero, may include very dangerous persons.

It is with respect to this last category that the definition of detention facility may appear over-broad, *i.e.*, a large number of different kinds of persons may be involuntarily committed, as a result of sexual psychopath, juvenile delinquency, narcotics or insanity proceedings. To make such persons guilty of a felony if they escape may well be deemed to convert a civil justification for confinement into a criminalization process. Of course, the requirement that the escape be from "custody" within a detention facility necessarily excludes from the scope of the section those who may have voluntarily committed themselves for treatment to particular institutions. Moreover, characterizing escape as criminal conduct for many of those in the civil category may have no practical effect, as their incapacity resulting from insanity or youth may render them not subject to the criminal law. There is a risk that this aspect of the escape provision may be misapplied; given the wide range of discretion in the criminal process, such



cases should be few. On balance, this risk seems outweighed by the desirability of comprehensive, uniform protection for the security of custodial institutions.

(b) **Forceible escape from custody.** Section 1300(1)(b) makes it a felony of the third degree for one to escape from custody by the use of force or violence upon another person. "Custody" is defined as any restraint by a public servant which has been authorized administratively or by a court, or any restraint by a peace officer or other person concerned in detention during or after the booking process. Proposed Section 1000(13). This subsection focuses on the use of force and violence to escape from restraint by one who has not yet been delivered to a detention facility. The first part of the definition of "custody" assumes that there has been an order (other than an arrest warrant) of a tribunal, either a court or an administrative agency, for the restraint. It seeks to protect that order from interference by force or violence. The second part of the definition, dealing with restraints by peace officers, does not apply to the on-the-street arrest, where the crime of resisting arrest will be the applicable offense, a conclusion that reflects current California law. See *In re Culver*, 73 Cal. Rptr. 393 (1968). Rather, this aspect of Section 1300(1)(b) focuses on the protection of custodial facilities, including the place where booking of alleged offenders takes place. It is important to note that, with respect to restraints of this kind, it makes no difference whether the original arrest was with or without an arrest warrant.

In defining custody of a peace officer in terms of the booking process, Subsection 1000(13)(b) necessarily implies that "custody" for the purposes of escape does not include on-the-street detention by a peace officer. Subsection 1000(13)(a) is intended to cover those situations where a public servant has obtained custody as a consequence of a judicial or administrative order. If that subsection were interpreted to include arrest warrants as a type of judicial order, it would embrace on-the-street arrests with a warrant, but not those effected without one. Although an argument might be made to support such a distinction, it seems to serve no practical purpose to distinguish fleeing an arrest by a peace officer upon the presence or absence of a warrant. Thus, the phrase

"other than an arrest warrant" has been included in Subsection 1000(13)(a) to assure that that subsection will not be interpreted to include arrests pursuant to warrants. The phrase is inserted in brackets because the treatment of the on-the-street arrest will be included within a resisting arrest provision, which has not yet been drafted, so that the precise relationship between escape and resisting arrest cannot be determined at this time.

## **(2) Section 1301. Escape**

Section 1301 establishes the misdemeanor of escape. As has been previously discussed, it makes non-forcible escape from custody a misdemeanor. Section 1000(15) expressly excepts releases on parole, probation, bail and the like from the definitions of "detention facility" and "custody" in Sections 1000(13) and (14). This requires—to the extent failure of one in that type of status to return to custody when lawfully required to do so is to be made criminal—that it be treated specially.

Attempts. The proposed sections dealing with escape do not include a definition of what constitutes an escape. The definitional problem is important largely to distinguish between an attempt to escape and the completed offense and this proposed code does not differentiate in penalty between attempts and substantive offenses. In this regard, it is consistent with existing California escape law which generally includes "escape or attempt to escape" in the definition of the escape offenses.

Culpability. The proposed sections do not set a specific culpability level, implying that lowest culpability for the establishment of the offense is recklessness. See Tentative Draft No. 1, Section 406. In the case of one who is escaping, it is difficult to conceive of situations where an escape would not be intentional or knowing; a *mens rea* of recklessness is the lowest meaningful level. To a substantial degree, the problem of culpability is not significant with respect to the one who is detained. It may be important with respect to complicity, the laxness of detention officials or the furnishing of implements for escape, all of which are matters treated separately in this chapter.

Penalty. The wide variety of penalties for escape in the existing California provisions has already been ad-

verted to. Proposed Sections 1300 and 1301 have the effects of making those penalties consistent and of reducing some of the longer penalties to that provided for a felony of the third degree. In addition, there are special sentencing provisions in California law, for example, a second term of imprisonment (for escape) does not commence until the time the prisoner would otherwise have been discharged, *Penal Code Sections 4133, 4530(a)*; see also *Penal Code Sections 3044, 4532(a), (b)*. Such provisions import an inflexibility into the sentencing process which is inconsistent with the general policy of this code, and are not included here.

### **Section 1302. Assisting Escape**

A significant number of provisions in current California law deal with the problem of assisting an escape. These provisions fall into two categories—penalties upon those concerned in detention<sup>70</sup> and penalties upon third persons.<sup>71</sup> Doctrines of complicity, coupled with the prohibitions against the possession or use of escape implements should suffice for the third party who aids in an escape, and, to some degree, for the detention official as well. Special provisions for the latter category are appropriate, however, for purposes of grading the offense at a higher level than the misdemeanor for escape under Section 1301. Thus, Section 1302, assisting escape, provides:

- (1) A public servant concerned in detention is guilty of assisting escape if he knowingly assists an escape.
- (2) Assisting escape is a felony of the third degree.

Grading of the offense as a felony of the third degree is warranted by the dependence of the detention process and facilities upon the trustworthiness of those concerned with this governmental operation.

### **Section 1303. Providing Escape Implements**

Furnishing to a prisoner or possession by him of implements for escape could in many circumstances amount to aiding an escape or an attempt to escape. In these cases a special provision dealing with furnishing or possession of escape implements would seem unnecessary. On the

<sup>70</sup> See *Pen. C. Sec. 4533*.

<sup>71</sup> See, e.g., *Pen. C. Secs. 4534, 4550; W. & I. C. Secs. 1152, 1257, 1768.7, 6721*.

other hand, in many situations, such conduct could be sufficiently far back or ambiguous to make the complicity and attempt routes difficult to traverse. Accordingly, there is sound basis for special provisions treating the furnishing or possession of escape implements, and there are several such sections in present California law,<sup>72</sup> with a concomitant range of penalties.<sup>73</sup>

Proposed Section 1303 is a felony of the third degree:

1303. (1) A person is guilty of providing escape implements if he knowingly introduces any escape implement within a detention facility, with intent to cause or assist the escape of any person confined therein.
- (2) A person confined within a detention facility is guilty of providing escape implements if he knowingly makes, obtains or possesses any escape implement with intent to effect an escape of himself or any other person.

Section 1303 depends upon the definition of "escape implement" in Section 1000(16):

"Escape implement" means any article or thing which is capable of such use as may endanger the security of a detention facility or facilitates the escape of any person confined therein.

The purpose of this section is to impose severe criminal sanctions upon the introduction into or use within any detention facility of implements which can facilitate an escape. The reinforcement of escape efforts with implements such as deadly weapons and escape devices not only substantially increases the probability of a successful escape; it runs the very substantial risk of causing serious physical harm to all those concerned in detention. At the same time, the definition of "escape implement" is so broad as to warrant the requirement of a *mens rea* of "intent to effect an escape of himself or any other person."

<sup>72</sup> See, e.g., Pen. C. Secs. 110, 171a, 2772, 2790, 4535, 4574.

<sup>73</sup> E.g., violations of Pen. C. Secs. 110, 4535 and 4574 are punishable by not less than one year in prison, making the maximum penalty life imprisonment, Pen. C. Secs. 671, *In re Kelly*, 242 Cal. App. 2d 115 (1966), *People v. Wells*, 68 Cal. App. 2d 476 (1945). Violation of Pen. C. Sec. 171a is "a felony." Pen. C. Secs. 2772 and 2790 carry a penalty of five years' imprisonment and disqualification from state office or employment.



## Sections 1307, 1308. Aggravated Failure to Appear; Failure to Appear

Present California law makes it a felony punishable with five years' imprisonment for one released on his own recognizance in connection with a felony charge to "wilfully fail to appear as he has agreed, *Penal Code Section 1319.4*, and a misdemeanor for one charged with a misdemeanor, *Penal Code Section 1319.6*. There is no criminal penalty for one released on bail to fail to appear. The major change which proposed Sections 1307 and 1308 would make is to provide the same criminal penalties for those who, having been released on bail, fail to appear as are applicable to those who have been released on their own recognizance. These sections provide:

1307. (1) A person is guilty of aggravated failure to appear when, having been released from custody, with bail or upon his own recognizance, by a court order or by other lawful authority upon condition that he subsequently appear personally upon a charge of a felony, he fails without lawful excuse to appear at the time and place which have been lawfully designated for his appearance.

(2) Aggravated failure to appear is a felony of the third degree.

1308. (1) A person is guilty of failure to appear when, having been released from custody, with bail or upon his own recognizance, by court order or by other lawful authority upon condition that he subsequently appear personally upon a charge of a misdemeanor [or petty misdemeanor], he fails without lawful excuse to appear at the time and place which have been lawfully designated for his appearance.

(2) Failure to appear is a misdemeanor.

Rationale. The most recent codes apply criminal penalties for failure to appear both when released on bail and upon one's own recognizance.<sup>74</sup> The justification for criminal penalties for failure to appear when released on

<sup>74</sup> See Ill. *Crim. C. Secs. 32-10, 110-2*; Mich. *Rev. Crim. C. Secs. 4620, 4621*; Minn. *Crim. C. Sec. 609.49*; N.Y. *Rev. Pen. Law Secs. 205.35, 205.40, 205.45*; United States, 18 U.S.C. Sec. 3150. The 1942 Louisiana Code, as amended by Art. 336 in 1966, provides a criminal penalty for jumping bail, *Crim. C. Sec. 110.1*, but none for failure to appear after release on one's own recognizance. The Wisconsin Code provides no criminal penalty for jumping bail and no own recognizance procedure.



one's own recognizance is that there are no meaningful enforcement techniques otherwise available. Providing an effective sanction should encourage the use of this form of release.

The problem of criminal sanctions for jumping bail is somewhat different. The California structure relies heavily for enforcement of the bail conditions and the location and return of the defaulter upon the bail surety company. Although providing a criminal sanction in this situation may serve only to make the task of these companies easier, to impose criminal penalties upon those who are released on their own recognizance but not upon those who raise bail would work an invidious discrimination based largely upon financial capacity. Accordingly, like other recent codes, failure to appear is made criminal under proposed Sections 1307 and 1308 whether the defendant is released "with bail or upon his own recognizance."

**Culpability.** Present California law penalizes a "willful failure to appear." While the formulation in other codes varies,<sup>75</sup> it is doubtful whether a difference in result is either intended or effected. The choice of the language in proposed Sections 1307 and 1308, "fails without lawful excuse," has the effect of setting the culpability level at recklessness, see Tentative Draft No. 1, Section 406, and also of providing a defense of physical impossibility, duress and such other matters as a court may wish to take into consideration when a person released has failed to appear and attempts to justify the failure. It also includes those situations such as certain motor vehicle violations for which forfeiture of bail is deemed to be the appropriate sanction.

**Penalty.** The most difficult question is that of grading. There is no bail jumping penalty in California, but the penalty for failure to appear on an own recognizance release is five years if a felony is the underlying charge, and a misdemeanor if the underlying charge is a misde-

<sup>75</sup> The Federal culpability level is the same as California, 18 U.S.C. Sec. 3150. Illinois punishes the one who "willfully fails to surrender" if released on bail, *Crim. C. Sec. 32-10*, but requires only a "failure to appear" on a recognizance release, *id.*, Sec. 110-2. Louisiana punishes the "intentional failure," *Crim. C. Sec. 110.1*. The Michigan Code penalizes the one who "intentionally fails without lawful excuse," *Rev. Crim. C. Secs. 4620, 4521*, as does *Minn. Crim. C. Sec. 609.49*. New York requires that he "fails to appear," but makes it an affirmative defense that the failure to appear was "unavoidable and due to circumstances beyond his control," *Rev. Pen. Law Secs. 205.35, 205.40, 205.45*. The Model Penal Code punishes the offender if, "without lawful excuse, he fails to appear," *P.O.D. Sec. 242.8*.

meanor. Differentiation of the penalty for failure to appear so as to depend upon the underlying charge is fairly typical,<sup>76</sup> although there are variations.<sup>77</sup>

Providing a criminal penalty for failure to appear which is lower than that for the original charged offense would seem to have no criminological significance other than to provide an additional basis for apprehension.<sup>78</sup> Indeed, there is some room for argument that providing penalties of the same grade of severity as the underlying offense has a similar lack of impact. Yet, failure to appear will rarely present a social evil or danger greater than that for the underlying offense, particularly in the case of conduct classified as a felony. Given this variety of conflicting factors, proposed Sections 1307 and 1308 adhere to the current California pattern of drawing the felony-misdemeanor distinction. The phrase "or petty misdemeanor" is placed in brackets to indicate the tentative nature of this category.

*Note.* Adoption of proposed Sections 1307 and 1308 will require express repeal of present *Penal Code Sections 1319.4 and 1319.6*, without affecting the other provisions of the Penal Code dealing with release on bail and on one's own recognizance.

### Other Related Matters

Irregularity in bringing about detention or custody. Present California law nominally provides a defense of the illegality of the detention to a charge of escape.<sup>79</sup> Indeed, there is language in the earlier cases to the effect that if the detention is sufficiently unlawful, the prisoner may use force to effect his escape. *People v. Ah Teung*, 421, 425 (1891). However, while recognizing that the de-

<sup>76</sup> Illinois, New York and the United States make this differentiation. The Michigan Code makes a similar differentiation, but draws the line between, on the one hand, murder, a Class A or B felony for which bail jumping is a Class C felony, and, on the other hand, a Class C felony or a misdemeanor, for which bail jumping is a misdemeanor.

<sup>77</sup> The Model Penal Code, *P.O.D. Sec. 242.8*, makes failure to appear a misdemeanor unless there are aggravating factors in which event it is a felony of the third degree. The aggravating factors are where the required appearance was to answer to a charge or disposition of felony and the actor took flight or went into hiding to avoid apprehension, trial or punishment.

Louisiana deals only with bail, and provides a two year additional penalty only in felony matters, with no apparent penalty for bail jumping in a misdemeanor situation. Minnesota is similar to Louisiana, except that the maximum is one year.

<sup>78</sup> The Michigan Committee's justification for its penalty of misdemeanor for jumping bail on a Class C felony charge was simply: "The Committee feels that this is [an] appropriate place to draw a line, because bail jumping by a person charged with a lower level felony should not itself be a felony of the same magnitude as the original crime." *Commentary*, p. 363.

<sup>79</sup> See *People v. Ah Teung*, 92 Cal. 421 (1891); *People v. Clark*, 69 Cal. App. 520 (1924).

ense still exists where the detention is "without any process and wholly without authority of law" and not a mere irregularity or informality," the recent cases have failed to find that the appropriate circumstances were present.<sup>80</sup>

Proposed Sections 1300 and 1301 presuppose detention in a facility, subsequent to official action. It is important to point out that all escapes that are made criminal are escapes either from a "detention facility" or from "custody." In the former case, "detention facility" is defined in Section 1000(14) as a place used for confinement pursuant to "an order of a court." The policy underlying the precluding of the defense of irregularity in a prosecution for escape from a detention facility is that attacks upon judicial orders should be made through the usual processes, not through the self-help of escape.

In the latter case, "custody" includes restraint pursuant to an order of a court or duly authorized administrative agency, Section 1000(13)(a), raising once again the policy of requiring resort to usual processes for vindication of assertions of irregularity in judicial or administrative orders. Section 1000(15)(b) defines "custody" in terms of the booking process or a detention facility. In this respect, the policy equates the facility where the booking takes place to a "detention facility," although in most cases there will have been no preceding judicial or administrative order. Nevertheless, the need for protection of orderly procedures for processing alleged offenders outweighs whatever desirability there may be in permitting self-help in these particular circumstances.

The upshot of these provisions is that one not in a detention facility who escapes without use of force or violence prior to being booked has not committed the offense of escape, a conclusion, as has been stated, that makes no change in California Law. *In re Culver*, 73 Cal. Rptr. 393 (1968).

### Other Related Offenses

A number of other types of conduct that are related to escape have not been included in this chapter on the

*People v. Ganger*, 97 Cal. App. 2d 11 (1950) (failure to file information in required fifteen days); *People v. Darnell*, 107 Cal. App. 2d 541 (1951); *People v. Jones*, 163 Cal. App. 2d 118 (1958), and *People v. Scherbing*, 93 Cal. App. 2d 736 (1949) (unconstitutionality of criminal statute); *People v. Hinze*, 97 Cal. App. 2d 1 (1950) (failure to advise defendant of right to counsel). See, also, *In re Estrada*, 63 Cal. 2d 740 (1965); *People v. Whipple*, 100 Cal. App. 261 (1929).

assumption that they more properly are to be included in other parts of this code or other codes. Thus, the introduction into a detention facility of articles, such as alcoholic beverages or narcotics, which are prohibited by statute, rule or regulation, is a problem more aptly treated in the Corrections Code. So, too, the problem of violation of probation or parole or assisting in such violation will be incorporated in the Corrections Code. Finally, the treatment of unauthorized departures from "halfway houses," work furloughs, and the like, is deferred to the Corrections Code.



## DIVISION 15. CRIMES AGAINST PROPERTY

### Chapter 3. Misappropriation

#### Section 2900. Definitions

In this chapter, unless a different meaning plainly is required:

(1) **"Deprive"** means: (a) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or (b) to abandon the property under circumstances amounting to a reckless exposure to loss.

(2) **"Movable property"** means property the location of which can be changed, including things growing on, or affixed to, or found in land, and documents although the rights represented thereby have no physical location. **"Immovable property"** is all other property.

(3) **"Obtains"** means: (a) in relation to property, to bring about a transfer or purported transfer of legal interest in the property, whether to the obtainer or another; or (b) in relation to labor or service, to secure performance thereof.

(4) **"Property"** means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, trade secrets.

(5) **"Property of another"** includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant shall not be deemed property of another who has only a security interest therein, even



if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(6) "Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and is not generally available to the public, and which gives one who uses it an advantage over actual or potential competitors who do not know of or use the trade secret, or the contents of private and unpublished records used in the business of examining, certifying or insuring titles to real property. Proof that the owner takes measures to prevent information from becoming available to persons other than those selected by the owner to have access thereto for limited purposes gives rise to an inference that the information is secret.

## COMMENT

### Section 2900. Definitions

The definitions of "deprive," "movable property," "immovable property," "obtain," "property," and "property of another" are substantially those of *Model Penal Code Section 223.0*. The definition of "trade secret" is an amalgam of *California Penal Code Sections 496c and 499c*.

The definition of "deprive" includes within the conception of theft both permanent withholding from the rightful owner, and temporary deprivations where high-value, mobile property is taken without intent to return it, and then abandoned under circumstances amounting to reckless exposure to loss; or where the intent is to return the property on payment of a reward or other compensation. As under present law, it will be no defense that the defendant intended to reimburse the owner for property presently misappropriated. In cases where property is taken and destroyed, there is an inevitable overlap with proposed Section 2804, criminal mischief. That overlap would present no problems, however, if grading of the offense of criminal mischief were made parallel with the grading of theft. (See the discussion under "Grading of Theft Offenses," *infra*.)

The definitions of "movable property," "immovable property," "obtain," and "property" taken together establish a broad definition of property interests subject

to theft. In the case of immovable property, mere use or occupation of land is excluded from the coverage of the theft statute, as under existing law, but included are such situations as those where a fiduciary for personal gain transfers legal title to real property to a bona fide purchaser. Drawing the line between "movable property" and "immovable property" eliminates unnecessary complications concerning such things as fixtures and growing crops which flow from common law distinctions between "real" and "personal" property. Section 2907, *infra*, more specifically treats the problem of theft of services.

The definition of "property of another" enlarges liability for theft from that of present California law by including as theft unprivileged misappropriation of joint property by a joint owner. It also contracts present California theft law by excluding from theft penalties transactions in fraud of secured creditors holding security title to the property. The problem of the absconding purchaser under a conditional sales contract, for example, will be treated under a general offense covering defrauding of secured creditors. (See, *e.g.*, *Model Penal Code Section 224.10.*)

"Trade secrets" have been added to the list of property subject to theft. The definition of "trade secret" is adapted from *California Penal Code Sections 496c, 499c*, to bring within the general theft provisions the copying and misappropriation of private real estate records and trade secrets now covered by those provisions of the California Penal Code. Both *Sections 496c and 499c* also deal with bribery of employees to obtain private records or trade secrets. That problem is not dealt with here, but should be considered as part of the general problem of commercial bribery. (See *Model Penal Code Section 224.8.*)

## **Section 2901. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally**

(1) **Consolidation of Theft Offenses.** Conduct denominated theft in this chapter constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the accusatory pleading, subject

only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

**(2) Grading of Theft Offenses.**

(a) Theft constitutes a felony of the third degree if the amount involved exceeds \$500, or if the property stolen is a firearm, automobile, aircraft, motorcycle, motorboat or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the defendant is in the business of buying or selling stolen property.

[The penalty for felony theft of public property or services by a public servant shall include forfeiture of the office of the public servant, in addition to that which may be otherwise prescribed by law for a felony of the third degree.]

(b) Theft not constituting a felony of the third degree is a misdemeanor if the amount involved exceeds \$50, or if the property stolen is a credit card, or if the property was taken from the person or by extortion.

(c) Theft not constituting a felony of the third degree or a misdemeanor is a petty misdemeanor.

(d) The amount involved in a theft shall be the fair market value of the property or services which the defendant stole or attempted to steal. Whether or not they have been issued or delivered, written instruments not having a readily ascertained market value shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might

reasonably suffer by virtue of the loss of the instrument.

(e) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, or amounts involved in thefts by a servant, agent or employee from his principal or employer in any period of 12 consecutive months, may be aggregated in determining the grade of the offense.

(3) Claim of Right. It is an affirmative defense to prosecution for theft that the defendant:

(a) was unaware that the property or service was that of another; or

(b) acted in good faith under a claim of right to the property or service involved or that he had a claim of right to acquire or dispose of it as he did.

[(4) Theft from Spouse. It is no defense that theft was from the defendant's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.]

### COMMENT

#### **Section 2901. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally**

This section parallels *Section 223.1 of the Model Penal Code*.

Consolidation of Theft Offenses. Section 2901(1) adds extortion and receiving stolen property to the consolidation of theft offenses which, under existing California law, includes larceny, larceny by trick, embezzlement and false pretenses. [It has not yet been concluded whether the present California rule on corroboration of accomplice testimony will be retained. If the rule should be retained, it is not the function of consolidation to require that the thief be treated as an accomplice to the receiver of the property, or vice-versa.]

Grading of Theft Offenses. Section 2901(2) expresses the nearly-universal practice of distinguishing felony and



misdemeanor theft by focusing on arbitrary amounts of money involved. As in *Model Penal Code Section 223.1(2)*, \$500 is taken as the line distinguishing felony and misdemeanor theft. The number of theft offenses where felony treatment is afforded theft of less than \$500 is kept to a minimum. All theft of automobiles, other motor vehicles, and firearms is treated as a felony because these items facilitate the commission of other offenses and aid in flight. The professional "fence," who is in the business of buying or selling stolen property, is also guilty of a felony regardless of the value of the property involved in the particular transaction. Theft of less than \$500 may also be aggravated to a felony in cases of burglary and robbery, which are not consolidated by this section into the general theft offense. It should be noted that, while the \$500 figure is essentially arbitrary, significant changes in the amount would require re-thinking of other decisions concerning grading. If the figure were substantially reduced, for example, a special provision for theft of vehicles might be unnecessary. If it were substantially increased, it might be appropriate to expand the classes of theft classified as a felony without reference to the amount taken.

There is, in addition, a relationship between the dollar amount used to mark the line between felony and misdemeanor theft, and the dollar amount used to mark the line between felony and misdemeanor criminal mischief. Under this section the felony-misdemeanor-petty misdemeanor lines are drawn at \$500 and \$50. Under the criminal mischief section, bracketed figures were \$5,000 and \$100, with a provision that conduct causing less than \$25 damage was an infraction. (Draft Section 2805.) Commentary stated that the bracketed figures would be reconsidered in light of decisions concerning grading of other property offenses. In cases where the defendant takes property for the purpose of destroying it, there is an overlap between the criminal mischief and theft provisions. That overlap would pose few problems if the same dollar figures were used in the theft and criminal mischief sections, and if the provision for the infraction offense in criminal mischief were eliminated.

[A provision for forfeiture of public office parallels the provision of Section 1011 of the draft statute concerning



receiving of bribes. California law now provides that embezzlement of public funds is an offense rendering the person convicted ineligible "to any office of honor, trust or profit." Since the proposed theft draft rejects the concept of aggravating the offense if the theft is of public funds by a public official, it is not clear that forfeiture of public office should follow automatically even from conviction of felony theft. This provision, accordingly, has been placed in brackets.]

In distinguishing petty theft offenses, Section 2901(2) follows the Model Penal Code, both in using a \$50 line dividing misdemeanor and petty misdemeanor theft, and in providing that theft of \$50 or less by extortion or from the person is a misdemeanor. Unlike the Model Penal Code, however, the burden of proving value is on the prosecution in all cases. Because of the potential loss which may be involved, it is specifically provided that theft of a credit card is a misdemeanor, avoiding the necessity to prove that the stolen card is worth more than \$50.

Unlike present California law, the following thefts of less than \$500 are *not* treated as a felony: theft of livestock, extortion, theft from the person, theft of a dog for purposes of sale, receiving stolen property, and embezzlement of public funds. There is no provision for felony treatment of petty theft following a prior theft conviction. If extended terms for recidivist petty theft are to be imposed, they would be imposed only under the criteria of a general provision for extended terms for misdemeanors. (*E.g., Model Penal Code Section 7.04.*)

The use of arbitrary dollar amounts to mark the line between felony and misdemeanor theft raises questions of policy in cases where the thief is mistaken as to the value of the object stolen. If the thief steals property worth less than \$500 which he believes to be worth more than \$500, he would be guilty of attempted grand theft. On the other hand, a thief who steals what he believes to be of relatively little value will be guilty of grand theft if the stolen object turns out to be worth more than \$500. While some thought was given to inclusion of intent or knowledge concerning the amount stolen into the felony theft definition, it was concluded that the problem was better handled through the general discretion of the sentencing judge to treat third degree felonies as misdemeanors in sentencing.

Section 2901(2)(d) contains provisions dealing with valuation of stolen property. It continues the fair market value standard of *California Penal Code Section 484*. The provisions for valuing written instruments are based upon *New York Revised Penal Law Section 155.20*. Section 2901(2)(d)(i) is similar to *California Penal Code Section 492*.

Section 2901(2)(e) deals with aggregation of amounts involved in "one scheme or course of conduct." At a verbal level, the standard is not significantly different from that employed in California decisions which permit aggregation of separate amounts taken under "one general intent." The provisions should, however, somewhat broaden the scope of permissible aggregation of amounts. It should, for example, permit aggregation in cases where a swindler goes from door to door cheating housewives of individually petty amounts. The aggregation permitted by this section is permissive only. In many cases, the prosecutor will have discretion to charge multiple petty thefts or a single grand theft. The issues of harassment and multiple punishment involved in the multiplication of offenses in single or related transactions are beyond the scope of this section. The provision for aggregation of amounts involved in thefts by an employee in a period of twelve consecutive months is taken from the existing provision of *Section 487 of the California Penal Code*.

**Claim of Right.** The claim of right provision of Section 2901(3) substantially restates existing California law. The provision of *California Penal Code Section 511*, providing that the claim of right defense is unavailable in embezzlement cases where the defendant has retained property "to offset or pay demands held against him," has not been retained. There is no similar restriction on the claim of right defense under present law if the defendant is charged with common law larceny or theft by false pretenses. In set-off cases, as in other cases, the claim of right defense will be available only where the defendant honestly believed he had the legal right to retain the property as a set-off.

**[Theft from Spouse.]** As under existing California law, Section 2901(4) would reject the common law rule that unity between husband and wife precludes the possibility of theft from a spouse. However, under the definition of

“property of another” in Section 2900(5), theft penalties will not be precluded simply because the defendant has a joint ownership interest in the property. Given the facts that ownership of household and other property is often a matter of uncertainty, or regarded as a common pool, theft penalties are inappropriate if the parties are living together, and the property is “household and personal effects, or other property normally accessible to both spouses.” It may be argued that this provision would substantially reduce the risk that theft prosecution would follow a family quarrel or domestic dispute. However, the provision is bracketed because it was determined that substantially similar results would follow under application of the general claim of right defense.]

### **Section 2902. Theft by Unlawful Taking or Disposition**

(1) **Movable Property.** A person is guilty of theft if he unlawfully takes, obtains, or exercises unlawful control over, movable property of another with intent to deprive him thereof.

(2) **Immovable Property.** A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with intent to deprive him thereof.

### **COMMENT**

#### **Section 2902. Theft by Unlawful Taking or Disposition**

Section 2902, which is taken nearly verbatim from *Model Penal Code Section 223.2*, deals with the offenses of larceny, embezzlement and fraudulent conversion. In the case of movable property, the concept of “unlawful control” marks the distinction between attempt and completed theft, and provides a flexible standard for the wide variety of takings constituting theft. (In any event, the attempt-completed crime distinction will not be a crucial distinction if the identical range of penalties is provided for attempts.) In the case of immovable property, unauthorized occupation of land is not theft, but a trustee or other person will be subjected to theft penalties if he transfers or encumbers real property in ways that are beyond effective relief by civil remedy, such as transfer or encumbrance to a bona fide purchaser for value. The mental element involved in the case of movable property includes the intent to deprive the



owner permanently and some temporary deprivations. (See Section 2900(1) and comment thereto.) The requirement that the taking, control or transfer be "unlawful" merely underscores the basic requirement that the prosecutor prove as part of a prima facie theft case that the taking, control or transfer was not privileged.

### Section 2903. Theft by Deception

A person is guilty of theft if he intentionally obtains property of another by deception. A person deceives if he intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) prevents another from acquiring information which would affect his judgment of a transaction; or

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as matters having no pecuniary significance, or puffing by statements unlikely to deceive typical members of the group addressed.

### COMMENT

### Section 2903. Theft by Deception

This section is taken from *Model Penal Code Section 223.3*. The most controversial provision, which includes misrepresentations of state of mind and false promises in the category of false pretenses, is already part of California law. *People v. Ashley*, 42 Cal. 2d 246 (1954). Misrepresentation of state of mind would include a representation that a statement is true where the speaker knows he lacks knowledge whether the statement is true or false. In other respects also, this provision would not

change California law. California cases which state that misrepresentations of value or opinion do not constitute false pretenses can be explained either as cases involving sellers' talk, or represent the pre-*Ashley* rule that misrepresentation of state of mind are not false pretenses. In general, mere omissions to correct a known false impression do not constitute deception. Preventing another from acquiring information, or failing to correct a false impression previously created or reinforced represent cases where the defendant has engaged in affirmative conduct rather than mere omission. In the case of failure to disclose an encumbrance on transfer of property, covered by Section 2903(4), silence is fairly equivalent to affirmative misrepresentation. California law is now in accord with the provision of Section 2903(3) that it is deception for the defendant to fail to correct a false impression which he "knows to be influencing another to whom he stands in a fiduciary or confidential relationship." The last clause eliminates non-pecuniary misrepresentations (such as a salesman's misrepresentation of his lodge affiliation) and mere puffing from the definition of deception. The definition of puffing makes it clear that misrepresentations aimed at an exceptionally gullible fringe group are not to be judged by their tendency to deceive ordinary persons in the public at large. In order to bring his misrepresentations within the "puffing" exception, the confidence man who preys on the ghetto-dweller or the aged will have to demonstrate that his statements were not likely to mislead those with whom he dealt. The "group addressed" in the puffing definition will, in some cases, be smaller than the group to which a general mailing or similar broadside publication or advertisement is actually sent. For example if the defendant intends, by his misrepresentations, to deceive the peculiarly gullible in a larger group, a material misrepresentation is not puffing simply because it deceives only a fraction of those actually receiving the misrepresentation.

#### **Section 2904. Theft by Extortion**

**A person is guilty of theft if he intentionally obtains property of another by threatening to:**



- (1) inflict bodily injury on anyone or commit any other criminal offense; or
- (2) accuse anyone of a criminal offense; or
- (3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
- (4) take or withhold action as an official, or cause an official to take or withhold action; or
- (5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the defendant purports to act; or
- (6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (7) do any other act which would not substantially benefit the defendant but which is calculated to harm another person.

It is an affirmative defense to prosecution for extortion by threats to charge any person with a crime that the defendant honestly believed the threatened charge to be true and that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances to which such charge relates.

## COMMENT

### Section 2904. Theft by Extortion

This section, taken from *Model Penal Code Section 223.4*, would make minor changes in California extortion law. While the list of threats enumerated in this statute is longer than the enumeration in present *California Penal Code Section 519*, most of the specifically enumerated threats would clearly constitute extortion under existing California law. The one possible exception may be the threat enumerated in Section 2904(6) since no similar provision appears in *Penal Code Section 519*, and no California case deals with this precise threat. Moreover, all of the threats enumerated by Section 2904 may be threats to injure any person, whereas *Penal Code Section 519* requires threats to defame or accuse of crime be

threats with reference to the victim, a relative or a member of his family. For unenumerated threats, the general principle enunciated in Section 2904 is that the threat be to do no harm which does not benefit the defendant substantially, but which is calculated to do harm to another person. This would avoid some of the problems experienced by California courts under *Penal Code Section 519(1)*, which requires that any unenumerated threat be a threat of "unlawful" harm. Some threats, such as the threat of a strike or boycott, for example, are privileged when they are not used by the defendant for the purpose of personal gain. Present California law is unclear whether the requirement of "unlawful" harm is merely tautological, or whether the defendant is privileged to threaten harm he would be otherwise privileged to inflict, as a basis of a demand for money. Finally, Section 2904 does not reach the situation where the defendant obtains official action by a public officer, rather than property, by threat. It is assumed that the latter conduct will be a crime under sections of the Penal Code dealing with bribery and corrupt influences to official conduct.

The affirmative defense contained in the last sentence of Section 2904 is patterned after *New York Penal Law Section 115.15(2)*. The California law has been stated to be that obtaining money by threats to accuse of crime is extortion, even if the threat has been used to collect a just debt. The fact patterns in the few cases, however, involve attempts to collect debts unrelated to the accusation of crime, or to collect more than was due. Those cases would not fall within the affirmative defense. The affirmative defense applies to the situation where the defendant agrees not to report a crime in exchange for honest restitution of his damage from the criminal act. It is consistent with a similar defense given to a charge of compounding a felony by *Model Penal Code Section 242.5*.

#### **Section 2905. Theft of Property Lost, Mislaid, or Delivered by Mistake**

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft

if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

### COMMENT

#### **Section 2905. Theft of Property Lost, Mislaid, or Delivered by Mistake**

This provision, taken from *Model Penal Code Section 223.5*, would replace the provisions of *California Penal Code Section 485*. This provision, however, reaches both lost and mislaid property, and requires actual knowledge that the property is lost or mislaid, and that the defendant have an intent to deprive the true owner. Thus, this section would not impose theft penalties on the merely negligent finder. In addition, this section reaches property delivered by mistake as to the nature or amount of the property—covering such situations as the defendant who accepts a \$10 bill in change, knowing that the person who gave it to him thought he was handing over a \$1 bill.

#### **Section 2906. Theft by Receiving Stolen Property**

(1) **Receiving.** A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen. It is a defense to a charge of violating this section that the defendant received, retained, or disposed of the property with intent to restore it to the owner.

(2) **Inference of Knowledge.** Where the defendant is in the business of buying, selling or otherwise dealing in property, proof that he obtained stolen property without having made reasonable inquiry whether the person from whom he obtained it had the legal right to sell or deliver it, and that he obtained it under circumstances which should have caused him to make such inquiry, gives rise to an inference that he obtained it knowing that it has been stolen or believing that it has probably been stolen.

### COMMENT

#### **Section 2906. Theft by Receiving Stolen Property**

Section 2906 differs from existing California law which requires knowledge that property has been stolen for conviction of receiving. *California Penal Code Section*

496(1). In contrast, Section 2906 adopts the somewhat less demanding standard of *Model Penal Code Section 223.6* which adds a belief "that it has probably been stolen." With reference to dealers, Section 2906 raises an inference of the requisite knowledge once the dealer has been shown to be negligent. While the similar presumption in *California Penal Code Section 496* is limited to secondhand dealers, the inference in Section 2906 applies to all persons in the business of buying, selling or otherwise dealing in property. However, Section 2906 leaves it open to the dealer to attempt to convince the trier of fact that he did not subjectively believe that the property had probably been stolen, even though he failed to make inquiry as to the seller's right to sell in circumstances where he should have made such inquiry. Under *Penal Code Section 496(3)*, the presumption can be rebutted only by proof that the defendant made a reasonable inquiry to ascertain the legal right of the seller. While the prosecutor should be allowed to make a prima facie case against the dealer by showing conduct that amounts to negligence, receiving stolen property is so serious an offense that negligence alone should not be the avowed basis of liability. Among factors which would be relevant to show that the dealer should have made inquiry would be purchase at a price which the dealer knew to be very low, purchase of valuable property from a child under suspicious circumstances, purchase from a seller who had previously sold the defendant property the dealer knows was stolen, etc.

Section 2906(1) contains a special affirmative defense that the defendant has received the property with intent to restore it to the owner. While California law has no such specific provision, it is desirable to have a special provision for such cases as where an insurance company pays a reward for the return of stolen property with no questions asked.

## **Section 2907. Theft of Services**

(1) **A** person is guilty of theft if he intentionally obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. "Services" include labor, professional service, transportation,



telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to an inference that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

### COMMENT

#### Section 2907. Theft of Services

Section 2907(1), taken from *Model Penal Code Section 223.7*, would replace separate statutes under the Penal Code which cover theft of electricity (*Penal Code Section 499a*), gas (*Penal Code Section 498*), water (*Penal Code Section 499*), telephone or telegraph service (*Penal Code Section 502.7*), and food and accommodations (*Penal Code Section 537*). It would also replace *Penal Code Sections 484(b)-(d)*, dealing with lease or rental of personal property. It applies also to fraudulent obtaining of professional services, transportation, or admission to exhibitions. The provision that absconding without payment gives rise to an inference of deception where payment for service is ordinarily made upon the rendering of the service is similar to the provisions of *Penal Code Section 537* that leaving the premises without paying is *prima facie* evidence of intent to defraud a restaurant or innkeeper. The inference would, however, apply beyond hotels and restaurants to similar situations, such as the absconding taxi passenger. In the case of rental property, there would be no presumption that the defendant had stolen the item itself merely because the defendant failed to return the rented item on time. There could be a presumption as to theft of the rental fee if he absconded without payment. (Compare *Vehicle Code Section 10855*; *Penal Code Section 484(b)*.) Where the renter is cheated out of his rental fee, grading of the offense would be governed by the amount of the rental and not by the



value of the rented chattel. Temporary deprivation of the rented movable property would amount to theft of the property itself if the owner has been "deprived" of it as that term is defined in Section 2900(1)—where the property is withheld for so extended a period as to appropriate a major portion of its economic value, or with intent to restore it only on payment of reward or other compensation, or, in appropriate cases, to violation of Section 2909.

Section 2907(2), taken from *Model Penal Code Section 223.7(2)*, has no explicit counterpart in existing California law. Arguably, it is theft under existing California law for a person to divert services which have been paid for by another person. This section would make theft liability clear.

#### **Section 2908. Theft by Failure to Make Required Disposition of Funds**

A person who in the course of business obtains property [from anyone or personal services from an employee] upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property as his own and fails to make the required disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

#### **COMMENT**

#### **Section 2908. Theft by Failure to Make Required Disposition of Funds**

This section, based on *Model Penal Code Section 223.8*, presents difficult analytical problems. While it has no exact counterpart in present California law, there are now a plethora of specific provisions making the failure to apply retained funds a crime. Examples include: *Labor Code Section 216* (wilful refusal by employer to pay wages due); *Unemployment and Insurance Code Section 2110* (wilful failure by employer to pay employee contributions to Department of Employment); *Labor Code*

*Section 227* (wilful failure to make payment to employee health fund as required by collective bargaining agreement); *Penal Code Section 504b* (wilful failure of debtor to pay secured creditor after sale of property covered by security agreement); *Penal Code Section 506b* (failure by seller of real property under sales contract to apply buyer's installment payments to tract mortgage); *Penal Code Section 424(7)* (wilful failure to pay over by public officer of funds received); *Penal Code Section 484b* (wilful failure by contractor to apply money received for purpose of paying for labor or materials). In each of these statutes, criminal liability reaches beyond traditional theft crimes of larceny and embezzlement, because the defendant is guilty even if the funds which were misapplied "belonged" to him. Thus, the alternatives which faced the draftsman were: (1) to attempt to draft a section which replaced such particularized statutory provisions with a single, generalized, concept; (2) to add to the draft a number of particularized provisions like those of present law; (3) to significantly curtail existing criminal liability for misappropriation of funds by limiting it to situations meeting common law standards of embezzlement or larceny. The first alternative was selected.

The general problem dealt with in this section is illustrated by the case of *Commonwealth v. Mitchneck*, 130 Pa. Super 433, 198 Atl. 463 (1938). There, a theft prosecution failed, where an employer withheld wages under an agreement to pay employee grocery bills which he fraudulently failed to pay. The missing element from a common law embezzlement prosecution is money "belonging" to the employees. There is, however, a difficult drafting problem in constructing a provision which reaches transactions where money has been earmarked for specific purposes, and yet leaves beyond the criminal law the mere failure to pay money due under a contract. *Model Penal Code Section 223.8* does as good a job as is possible. The key requirements of that statute, and of the draft statute, are the requirements that there be a "known legal obligation to make specified payment or other disposition," and that if payment is not to be made from property received from the victim, that payment come from the defendant's own property "to be reserved

in equivalent amount." It is clearly not the intent of these provisions to permit every creditor to turn an ordinary credit transaction into one where the defaulting debtor runs afoul of the criminal law simply by inserting a form contract provision that the debtor will "reserve" money from his wages to apply to payments on the debt. This section applies only where there is a present duty imposed by law to reserve funds for particular disposition, and not to cases where the defendant's duty is limited to a promise to pay in the future. Moreover, the property obtained must be obtained in the course of the defendant's business.

[The bracketed provision, not found in *Model Penal Code Section 223.8*, is an attempt to solve the problem in the *Mitchneck* case. If there is a requirement that the defendant "obtain" money, there is an argument that, since the defendant did not receive the money from the defrauded employees, he had not "obtained" any funds at all. The bracketed clause would make it clear that theft liability would attach to a defendant like *Mitchneck* who obtained the services of his employees through his agreement to withhold wages for specified purposes. The same result should follow without the bracketed language, which is taken from the proposed *Michigan Criminal Code Section 3225*, since the definition of property in *Section 2900(4)* is broad enough to include personal services.]

The requirement that failure to make the required disposition be "intentional" should eliminate any issue concerning imprisonment for debt. (Compare *In re Trombley*, 31 Cal. 2d 801, 193 P.2d 734 (1948) with *People v. Holder*, 53 Cal. App. 45, 199 Pac. 832 (1921).)

### **Section 2909. Unauthorized Use of Automobile and Other Vehicles**

A person commits a misdemeanor if he operates another automobile, aircraft, motorcycle, motorboat or other motor-propelled vehicle, or any sailboat, without consent of the owner or other person authorized to give consent. It is an affirmative defense to prosecution under this section that the defendant reasonably believed that the owner or other person authorized to give consent would have consented to the operation had he known of it.

## COMMENT

**Section 2909. Unauthorized Use of Automobiles and Other Vehicles**

This section is a relatively simple one, dealing with the joy-riding problem. If the defendant intends to "deprive" the owner of the vehicle, as that term is defined in Section 2900—*i.e.*, to withhold it permanently or for so extended a period as to appropriate a major portion of its value, or to dispose of it so as to make it unlikely that the owner will recover it—he would be subject to ordinary theft penalties. If the taking does not rise to such a deprivation, it is an unauthorized use under Section 2909. Unauthorized use by a bailee would also fall within this section. This provision will be a lesser included offense within a charge of theft. Unlike existing California law, airplane joy-riding is also a misdemeanor, and there is no provision covering the temporary taking of a bicycle. Under existing California law, joy-riding penalties cover all "vessels," while the coverage of this section is limited to motorboats and sailboats.

Most important, this section would eliminate the considerable confusion surrounding temporary taking of motor vehicles, which comprise the bulk of the joy-riding problem. Under present California law, the misdemeanor joy-riding provision (*Penal Code Section 499b*) is not a lesser included offense within a charge of theft. Moreover, there is overlap and confusion with the provision of *Vehicle Code Section 10851* which provides felony punishment for taking a vehicle without the owner's consent with intent to deprive the owner temporarily or permanently of possession or title. It is possible to violate the felony provision by a temporary taking which does not violate *Section 499b of the Penal Code*, but all conceivable violations of the misdemeanor joy-riding provision can be charged as a felony under the Vehicle Code.

The final provision makes it clear that reasonable belief that the owner would have consented, if asked, is a defense, insuring that such situations as informal borrowing of automobiles by family members or friends will not result in criminal conviction.



## APPENDIX

### Definitions

“Deprive” is defined by *Section 223.0(1) of the Proposed Official Draft* to mean:

(a) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or (b) to dispose of the property so as to make it unlikely that the owner will recover it.

By this definition it was intended to punish as theft both permanent withholding of property from the rightful owner, and some forms of temporary withholding.<sup>1</sup> With reference to temporary deprivations, the section was intended to reach situations where a fictional finding of intent to deprive permanently was permitted at common law: where high-value, mobile property was taken without intent to return it, and then abandoned under circumstances amounting to reckless exposure to loss; or where the intent to return was conditional on payment of a reward or other compensation.<sup>2</sup>

California larceny cases talk in terms of an intent to deprive “wholly and permanently,”<sup>3</sup> but this is simply the common law standard. While an early case rejects the broad notion that taking of a bicycle with intent to use it for a while and then abandon it is larceny,<sup>4</sup> no California case has been found which deals with the situation where abandoned property is recklessly exposed to loss. Thus, while adoption of the definition of “deprive” in *Proposed Official Draft Section 223.0(1)* would probably result in some amplification in the standard jury instruction,<sup>5</sup> it is not clear whether it would amplify theft liability in the case of temporary takings. If it would not do

<sup>1</sup> The “joyriding” problem is separately treated as a misdemeanor elsewhere in the statute. *P.O.D. Sec. 223.9*.

<sup>2</sup> *Tent. Draft No. 1*, comment at 69-70; *Tent. Draft No. 2*, comment at 88.

<sup>3</sup> *E.g., Callan v. Superior Court*, 204 Cal. App. 2d 652, 667, 22 Cal. Rptr. 508 (1962); *People v. Dimitrovitch*, 194 Cal. App. 2d 710, 718, 15 Cal. Rptr. 407 (1961); *People v. Torres*, 201 Cal. App. 2d 290, 294, 20 Cal. Rptr. 315 (1962).

<sup>4</sup> *People v. Brown*, 105 Cal. 66, 68-69 (1894).

<sup>5</sup> CALJIC 221 instructs the jury, without more, that the intent must be to permanently deprive the owner of his property.



so, the section is useful as a clarification of existing law. If the section would expand theft liability, the expansion seems a desirable one, in line with common law decisions in other states.

In embezzlement cases, *California Penal Code Section 512* expressly provides that intent to restore is no defense or mitigation if the property is not restored before the indictment or information is handed down. Under *Penal Code Section 513*, restoration made prior to indictment or information is no defense but goes to mitigation of punishment. Thus, it is no defense to a charge of embezzlement of funds that the defendant intended or was able to repay.<sup>6</sup> Without specific statutory provision, the same result has been reached in false pretenses cases.<sup>7</sup> These results are not inconsistent with the definition of "deprive" in the Proposed Official Draft, even though that definition encompasses embezzlement and false pretenses. As explained by the commentary to *Tentative Draft No. 1*:<sup>8</sup>

As under present law, it is no defense that the actor intends to reimburse the owner later for property presently misappropriated . . . . Deprivation accompanied by an intent to make good later, by payment of money or by the actor's repurchasing an equivalent article for restoration to the owner, is quite different in effect from the taking of a thing for temporary use of the taker. In the latter situation, the actor's retention of the property offers some assurance of his ability to restore, beyond his general credit. In the former situation, the man who takes money intending to repay or the broker who sells his client's bonds meaning to repurchase and restore the bonds later, substitutes his own credit for the owner's property in hand. Even if the actor carries out his intent to restore, he is simply paying off a liability from his own assets, rather than restoring property which has continued to belong to the owner during the interval of deprivation.

The draft does not reflect a provision like that in *Penal Code Sections 512, 513* providing for mitigation if em-

<sup>6</sup> *People v. Talbot*, 220 Cal. 3, 16, 28 P.2d 1057 (1934); *People v. Williams*, 145 Cal. App. 2d 163, 167, 302 P.2d 393 (1956).

<sup>7</sup> *People v. Weiger*, 100 Cal. 352, 357, 34 Pac. 826 (1893); *People v. Bowman*, 24 Cal. App. 781, 785, 142 Pac. 495 (1914).

<sup>8</sup> Pp. 72-73.

bezzled property is restored prior to indictment or information, but not after. There seems little need, under flexible sentencing provisions, for such a rule of thumb—and in any event, not one applicable only to embezzlement.

*Property subject to theft.* *Proposed Official Draft Sections 223.0(5) and 223.0(6)* are intended to establish a broad definition of the property interests subject to theft. Only minor changes would be made in existing California law. They provide:

Section 223.0(5) “obtain” means: (a) in relation to property, to bring about a transfer or purported transfer of a legal interest in property, whether to the obtainer or another; or (b) in relation to labor or service, to secure performance thereof.

Section 223.0(6) “property” means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power.

As will be explained in more detail below, these sections would make unnecessary a number of existing sections of the Penal Code which have made certain forms of property subject to theft penalties on a piece-meal basis. Some of those sections, however, also enact elaborate provisions dealing with particular forms of conduct or presumptions.<sup>9</sup> The discussion at this point will be limited to the forms of property interest subject to theft penalties. Whether elaborate special provisions, presumptions, etc., should be continued with reference to certain kinds of theft of services or intangibles will be discussed with reference to *Proposed Official Draft Section 223.7* (theft of services).

*Real Estate.* The inclusion of “real estate” in *Proposed Official Draft Section 223.0(6)* is buttressed by the provision of *Proposed Official Draft Section 223.2(2)* defining theft to include unlawful transfers of “immovable property of another or any interest therein” with the purpose of benefiting the actor or a person not entitled

<sup>9</sup> *E.g.*, the provisions covering theft of telephone service, *Pen. C. Sec. 502.7*, trade secrets, *Pen. C. Sec. 499c*, rented automobiles, *Pen. C. Secs. 484(b)–484(d)*.

to the property.<sup>10</sup> The net result of all of this is to exclude use or occupation of land from theft penalties even if done with the purpose of permanent appropriation, yet including such situations as where a fiduciary for personal gain transfers legal title to real property to a bona fide purchaser.

This would appear to restate, in more coherent fashion, existing California law. Immovable property is subject to theft by false pretenses and embezzlement, but not by common law larceny.<sup>11</sup> This apparently works out exactly as the provisions of the Proposed Official Draft which draws the line, not between larceny on the one hand and false pretenses and embezzlement on the other, but between movable property<sup>12</sup> and immovable property.<sup>13</sup> Drawing the line between movable and immovable property rather than real and personal property, also avoids unnecessary problems with fixtures and growing things which are treated simply in the manner as personal property.<sup>14</sup> The Proposed Official Draft would probably change the California rule which excludes, for no rational reason, undelivered deeds from being the subject of larceny.<sup>15</sup>

*"Tangible and intangible personal property, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets."* Replacement of existing penal code provisions with the preceding language would simplify the existing statutory structure, but would not make substantive changes in the law. No cases have been found which deal with theft of intangible

<sup>10</sup> Movable property is defined by *P.O.D. Sec. 223.0(4)* to mean "property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location." Immovable property is defined as all other property.

<sup>11</sup> Under *Pen. C. Sec. 484*, only personal property is the subject of larceny. Under *Pen. C. Sec. 484* and *Pen. C. Sec. 503*, "property" is subject to embezzlement. *Pen. C. Sec. 7* defines property to include both real and personal property. *People v. Glass*, 181 Cal. App. 2d 549, 5 Cal. Rptr. 289 (1960). *Pen. C. Sec. 532* was amended in 1905 to add real property to the class of property subject to false pretenses. *People v. Rabe*, 202 Cal. 409, 416, 261 Pac. 303 (1927); *People v. Pugh*, 137 Cal. App. 2d 226, 289 P.2d 826 (1955).

<sup>12</sup> Under *P.O.D. Sec. 223.2(1)* theft of movable property exists if a person "exercises unauthorized control" over movable property.

<sup>13</sup> Under *P.O.D. Sec. 223.2(2)* theft of immovable property consists in unlawful transfer of the property.

<sup>14</sup> Under *Pen. C. Secs. 487b-487c* it is theft to convert real property to personal property by severance. A \$50 dividing line is used rather than \$200 for the distinction between petty theft and grand theft. On this issue, see the discussion of grading of theft offenses, *infra*.

<sup>15</sup> *P.O.D. Sec. 223.0(6)* includes "anything of value" in its definition of value. *P.O.D. Sec. 223.0(4)* defines "movable property" to include "documents although the rights represented thereby have no physical location." *Pen. C. Sec. 494* provides for theft of undelivered instruments for the payment of money, evidences of debt, public securities or passage tickets, and was interpreted to leave unchanged the common law rule that an undelivered deed was not the subject of larceny. *People v. Dadmun*, 23 Cal. App. 290, 137 Pac. 1071 (1913); *cf. Buck v. Superior Court*, 245 Cal. App. 2d 431, 54 Cal. Rptr. 282 (1966).



rights not represented by a document. However, under *Penal Code Section 7*, personal property is defined to include choses in action. Written instruments can be the subject of larceny,<sup>16</sup> embezzlement,<sup>17</sup> or false pretenses.<sup>18</sup> Tickets for public transportation are covered, whether delivered or undelivered.<sup>19</sup> While other forms of tickets are not specifically mentioned, the broad definition of personal property to include things in action and evidences of debt,<sup>20</sup> as well as the analogy to transportation tickets, would probably be sufficient under existing law.

*Services.* The word "obtain" is defined in *Proposed Official Draft Sec. 223.0(5)* to include securing the performance of labor or services. Generally, outside of such statutes as those imposing penalties for cheating hotels and restaurants, it has generally not been considered criminal to induce a doctor, engineer or lawyer to render services by false representations.<sup>21</sup> There are no California cases directly in point, which may at least indicate a lack of prosecutions in such situations under the general theft provisions. The provisions of *Proposed Official Draft* dealing with theft of labor or services would, however, appear to restate existing California law. Under *Penal Code Section 484*, theft is defined to include fraudulently obtaining the "labor or service of another."<sup>22</sup>

*Property of another.* The definition of "property of another" in *Proposed Official Draft Sec. 223.0(7)* is designed to accomplish three objectives: to subject to theft penalties partners or tenants-in-common or owners of joint bank accounts for stealing from other parties who have a joint interest in the property; to subject contraband property to theft penalties; to remove transactions by owners of encumbered property from the reach of the theft statutes.

*Co-ownership.* *Proposed Official Draft Section 223.0(7)* defines "property of another" to include "property in which any person other than the actor has an interest

<sup>16</sup> *Pen. C. Sec. 492*; *People v. Quiel*, 68 Cal. App. 2d 674, 678, 157 P.2d 446 (1945).

<sup>17</sup> *Pen. C. Sec. 510*; *People v. Cohen*, 71 Cal. App. 367, 235 Pac. 658 (1925) (travelers' checks issued in blank); *People v. Glass*, 181 Cal. App. 2d 549, 553, 5 Cal. Rptr. 289 (1960) (trust deed).

<sup>18</sup> *People v. Frankfort*, 114 Cal. App. 2d 680, 703, 251 P.2d 401 (1952); *People v. Caruso*, 176 Cal. App. 2d 272, 280, 1 Cal. Rptr. 428 (1959).

<sup>19</sup> *Pen. C. Secs. 493-494*.

<sup>20</sup> *Pen. C. Sec. 7*.

<sup>21</sup> *Tent. Draft No. 2*, comment at p. 91.

<sup>22</sup> *Pen. C. Sec. 487* defines grand theft to include situations where "the money, labor or real or personal property taken" exceeds the value of \$200. *Pen. C. Sec. 532* speaks of defrauding other persons of "money, labor, or property."

which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property . . . ." Adoption of this provision would appear to enlarge the scope of theft from that of present California law, and properly so. The Proposed Official Draft provision was explained on the ground that the common law conceptions that joint owners have title "have no relevance to the criminal law's effort to deter deprivations of other people's economic interests."<sup>23</sup>

Under present California law, there is strong dictum that a partner cannot embezzle from the partnership, although in none of the cases were all the requisites for embezzlement found to exist.<sup>24</sup> It appears, however, that a partner can be found guilty of theft by false pretenses from the partnership, at least where the victims were induced to join the partnership by false pretenses.<sup>25</sup> Under the Proposed Official Draft, theft by embezzlement and false pretenses by a partner from a partnership would be possible, without any necessity for a finding that the victim was induced to join the partnership by fraud.

*Contraband.* Proposed Official Draft Section 223.0(7) makes contraband subject to theft penalties by providing that "property of another" includes property in which other persons have an interest "regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband." There is no similar specific provision in the Penal Code. However, the section seems simply to state California decisional law.<sup>26</sup>

<sup>23</sup> *Tent. Draft No. 2*, comment at p. 101.

<sup>24</sup> *People v. Foss*, 7 Cal. 2d 669, 62 P.2d 372; *People v. Hotz*, 85 Cal. App. 450, 452, 259 Pac. 506 (1927); *People v. Brody*, 29 Cal. App. 2d 6, 10, 83 P.2d 952 (1938).

<sup>25</sup> *People v. Jones*, 36 Cal. 2d 373, 224 P.2d 353 (1950). Defendant had induced victims to join a partnership by false pretenses, and then converted the funds to his personal use. The victims did not have actual control over the funds, since their names were not on the bank signature card. The court distinguished *People v. Cravens*, 79 Cal. App. 2d 658, 180 P.2d 453 (1947), on the grounds that there was no evidence of wrongful taking by the defendant, and the victim had retained the right to draw money from the bank at any time, and in fact did so from time to time. In *Jones*, the court emphasized language in *Cravens* to the effect that it should not be possible to defraud with impunity by a two-stage process involving setting up of a partnership.

<sup>26</sup> *People v. Walker*, 33 Cal. App. 2d 18, 20, 90 P.2d 854 (1939) (burglary of slot machines); *People v. Oldenwald*, 104 Cal. App. 203, 285 Pac. 406 (1930) (burglary of liquor during prohibition). Cf. *People v. Rosen*, 11 Cal. 2d 147, 152, 78 P.2d 727 (1938). Defendant, who had lost money in illegal gambling, returned that night to the gambling establishment and took \$200—less than he had lost. It was held that since gambling was illegal, the gaming operator was guilty of conversion, and defendant had not taken the property of another. In *People v. Walker*, *supra*, on the ground that defendant had taken the property under a claim of right, and was not a stranger to the contraband property.



*Transactions by owners of encumbered property.* *Proposed Official Draft Section 223.0(7)* provides: "Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement." The philosophy of this section is that theft sanctions are inappropriate for the situation where the owner of encumbered property refuses to pay his creditor, and hides or removes the secured property. This problem is treated in the context of a general provision for the protection of creditors.<sup>27</sup>

Under *Penal Code Section 504a*, it is embezzlement for a purchaser, "under a contract of purchase not yet fulfilled," to fraudulently remove, conceal or dispose of personal property. Thus it is embezzlement for the conditional vendee to remove, conceal or dispose of property with an intent to injure the conditional vendor.<sup>28</sup> If theft penalties are to continue to be levied against such transactions by the owners of secured property, there seems no sound reason to limit the penalty to purchasers under conditional sales contracts, and exclude, *e.g.*, such as a chattel mortgagee. To a large extent, the issue is one of grading of the offense. *Proposed Official Draft Section 224.10*, covering defrauding a secured creditor, provides for misdemeanor punishment regardless of the nature or value of the property. Applying theft penalties makes the offense a felony if the property is worth more than the relevant dollar amount or if the property is, for example, a car. In the case of absconding by a conditional vendee, some of the reasons for grand theft treatment in some cases become inapplicable. For example, in the case of a car worth less than the relevant dollar amount, it would not seem appropriate to impose felony penalties because of a likelihood that the car will be used for further illegal enterprises. The best solution would seem to be to follow the lead of the Proposed Official Draft and treat all transactions in fraud of secured creditors separately from the issue of theft.

<sup>27</sup> *Tent. Draft No. 2*, comment at p. 101. *P.O.D. 224.10* provides that it is a misdemeanor if the actor "destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest."

<sup>28</sup> *People v. Eddington*, 201 Cal. App. 2d 574, 20 Cal. Rptr. 122 (1962); *General Motors Acceptance Corp. v. Gilbert*, 196 Cal. App. 2d 732, 740, 17 Cal. Rptr. 35 (1961).

## Consolidation of Theft Offenses

*Proposed Official Draft Section 223.1(1)* provides for consolidation of theft offenses as follows:

Conduct denominated theft in this Article constitutes a single offense. . . . An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Article, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the Court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Since 1927, California has provided for the procedural consolidation of the offense of larceny, larceny by trick, embezzlement, and false pretenses.<sup>29</sup> The elements of the crimes remain the same, however, and the evidence must show the commission of one of these crimes.<sup>30</sup> No significant policy issues arise from the fact that the Proposed Official Draft adds extortion and receiving stolen property to the list of consolidated offenses. Indeed, it may have some salutary effects in the situation where it is not clear whether the person in possession of stolen property is the thief,<sup>31</sup> or where it is not clear whether a victim parted with money because he believed false representations or because he was merely frightened by them.<sup>31a</sup>

The major purpose of consolidation is to avoid the procedural implications of charging the wrong kind of theft in the indictment or information. In that sense, *Proposed Official Draft Section 223.1(1)* simply amplifies existing California policy. It has, however, substantive implications as well when combined with other provisions of Article 223. To the extent, for example, that the common law theft crimes had different rules for such issues as the grading between felony and misdemeanor, the unitary treatment of those issues in other

<sup>29</sup> *Pen. C. Sec. 490a.*

<sup>30</sup> See *People v. Ashley*, 42 Cal. 2d 246, 258, 267 P.2d 271 (1954); *People v. Riley*, 217 Cal. App. 2d 11, 17, 31 Cal. Rptr. 404 (1963); *People v. Fewkes*, 214 Cal. 142, 147 4 P.2d 538 (1931).

<sup>31</sup> Apparently, proof that the defendant was the thief would be a defense to a charge filed under *Pen. C. 496*, receiving stolen property. *People v. Bausell*, 18 Cal. App. 2d 15 (1936). The prosecution may, however, go to the jury on alternate counts of theft and receiving stolen property. *People v. Hansard*, 245 Cal. App. 2d 691, 53 Cal. Rptr. 918 (1966).

<sup>31a</sup> See *Tent. Draft No. 1*, p. 107.

provisions of Article 223 may obliterate some of the substantive distinctions among the various theft crimes. Whether the substantive obliteration of differences between theft crimes is appropriate is best considered with reference to the discussion of the specific issues as they arise.

### Grading of Theft Offenses

The grading of theft offenses raises the following issues. First is the number of classes of felony and misdemeanor into which the various theft offenses will be grouped. Next are the criteria for distinguishing between between felony and misdemeanor theft. To the extent that distinctions between felony and misdemeanor theft provisions depend on valuation of the property stolen, what is the basic dollar figure to be? Should the theft of some kinds of property be graded as a felony without reference to the value of the particular property stolen, or should the theft of some kinds of property be graded with reference to a lesser dollar figure? Should some kinds of conduct defined as theft be classified as a felony without reference to the amount of property taken? Third are the problems of valuation of property and aggregation of smaller amounts. Finally, the issue is considered whether petty theft should be treated as a felony after prior conviction of a theft offense or felony.

*The number of classes of theft.* Under present California law, only two classes of theft are recognized: grand theft punishable by either imprisonment in county jail or in state prison for from one to ten years; petty theft, punishable by fine not exceeding \$500 or by imprisonment in county jail not exceeding six months.<sup>32</sup> There are, in addition, various provisions punishing specific kinds of theft with different maximum misdemeanor and felony provisions. See, *e.g.*, *Penal Code Sections 487b, 487c*, dealing with grand and petty theft of real property converted to personal property by severance. The Model Penal Code recognizes three classes of theft offenses: felony of the third degree, misdemeanor, and petty misdemeanor.<sup>33</sup> Most states recognize only the distinction between grand theft and petty theft.<sup>34</sup> Wisconsin

<sup>32</sup> *Pen. C. Secs. 489, 490.*

<sup>33</sup> *P.O.D. Secs. 223.1(2).*

<sup>34</sup> *Tent. Draft No. 2*, comment at p. 108.



recognizes three classes of theft.<sup>35</sup> This is, however, a simplification of its previous five-step scale. New York recognizes petit larceny and three classes of grand larceny.<sup>36</sup>

The draft follows the Model Penal Code in providing for only one class of felony theft. The more complex New York system can be explained by the lack of the flexibility like that provided by California's indeterminate sentence law. As in the Model Penal Code, felony theft is made a felony of the third degree. However, since the maximum dollar figure for petty theft in the suggested draft is considerably higher than under existing California law, and the range of petty theft has been further broadened by reducing the class of cases of theft given felony treatment without reference to amount, the draft also adopts the two-stage misdemeanor classification of the Model Penal Code for further flexibility in the treatment of non-felony theft.

*Grading with reference to valuation of property.* The figure of \$200 marks the general line between grand and petty theft under present California law. *California Penal Code Section 487*. By contrast, the analogous figure in the Model Code is \$500.<sup>37</sup> The figure is set at \$250 in New York,<sup>38</sup> \$150 in Illinois<sup>39</sup> and \$100 in Wisconsin.<sup>40</sup>

The dollar figure dividing grand from petty theft has risen in California. In the 1872 Code, the figure was set at \$50. The figure was raised to \$200 in 1923. It has not, however, been changed since 1923. The 1965 New York revision raised the figure from \$100 to \$250. By contrast, however, the 1961 Illinois revision reduced the amount from \$300 to \$150. This was defended by the Revision Commission as "more realistic in view of the harm which can result to many families by theft and permanent loss of single pieces of equipment, or several pieces of property worth more than \$150 . . . ." (It should be noted that the Illinois theft provisions do not have special provisions for grand theft treatment of theft of automobiles.)

<sup>35</sup> Below \$100, \$100 to \$10,000, and over \$10,000. *Wisc. Crim. C. Sec. 934.20*.

<sup>36</sup> *N.Y. Pen. Law Secs. 155.25-155.40*.

<sup>37</sup> *P.O.D. Sec. 223.1(2)*.

<sup>38</sup> *N.Y. Pen. Law Sec. 155.30*. (Further aggravation is possible if the value of the property stolen exceeds \$1,500. *N.Y. Pen. Law Sec. 155.35*.)

<sup>39</sup> *Ill. Crim. C. Sec. 16-1*.

<sup>40</sup> *Wisc. Crim. C. Sec. 933.20(3)*. Further aggravation occurs if the value exceeds \$2,500. *Id.*

By its nature, the dollar figure will be an arbitrary amount. The draft adopts the \$500 figure of the Model Penal Code. The figure is conservative as compared to the 1923 figure of \$200, if the \$200 figure is adjusted for subsequent inflation.<sup>41</sup>

In distinguishing petty theft offenses, the Model Penal Code uses a \$50 dividing line, which is also reflected in the draft. It should be pointed out that the reason given for choosing this figure in 1954 has been destroyed in inflation.<sup>42</sup>

As in the Model Penal Code, existing California law, and other penal codes studied, no explicit provision has been made with reference to the problem of the thief who is mistaken as to the value of what he is stealing. The thief who believes property he has stolen is much more valuable than it is (*e.g.*, one who believes he is stealing valuable diamonds which turn out to be imitation) will, presumably, be guilty of attempted grand theft. On the other hand, the thief who believes he is stealing very inexpensive goods will be guilty of grand theft if what he has taken turns out to be extremely valuable. In the latter situation, it could be argued that grading of the offense ought to be determined by the value as the defendant saw it, and not by the accident of value as it turns out in practice. One difficulty with that approach is drafting a provision which would appropriately determine all the myriad situations where the defendant is mistaken as to the nature or value of the property he took. A second problem is that the thief who discovered the valuable nature of the property before he was apprehended would, in any event, be guilty of the consolidated offense of grand theft by receiving stolen property. The most appealing case, of course, is that of the thief who stole what he thought had relatively little value and made prompt efforts to restore the property when he discovered his error. The decision was to leave this problem to flexibility in sentencing, which would allow reduction of the third degree felony to a lesser offense in sentencing, rather than to try to incorporate a complex grading scheme in the statute which would

<sup>41</sup> It should be noted that, as of 1954, the California figure of \$200 was highest in the nation. *Tent. Draft No. 2*, comment at p. 108.

<sup>42</sup> "If we assume that \$50 represents a week's wage, a theft of this amount has the same significance to most victims as being out of work for one week. . . ." *Tent. Draft No. 2*, comment at p. 109.



automatically reduce the level of the crime. In other words, the principle that the thief takes the risk of committing a greater offense if he is mistaken as to the nature or identity of the goods he stole, was adopted on the assumption that flexibility in sentencing provisions would alleviate the harshness of that principle.

*Grading with reference to the nature of the property.* Four kinds of property are protected by grand theft penalties under existing California law without reference to the value of the property stolen: automobiles and airplanes, firearms, certain kinds of livestock, and "gold dust amalgam or quicksilver." The Model Penal Code puts in this classification firearms, automobiles, airplanes, motorcycles and motorboats.<sup>43</sup> New York includes public records and "secret scientific material."<sup>44</sup> Illinois recognizes no special classes of property.<sup>45</sup> Wisconsin includes only "domestic animals."<sup>46</sup>

*Automobiles and other motor vehicles* are specially treated by the Model Penal Code because stolen vehicles facilitate the commission of other offenses and aid in flight. Weapons are included for similar reasons.<sup>47</sup> The draft likewise continues present California policy of specially treating theft of automobiles, airplanes and firearms. Because, however, the draft also recognizes an increase in the general amount from \$200 to \$500, the draft follows the Model Penal Code in covering motorcycles and motorboats in addition to automobiles and airplanes.<sup>48</sup>

*The remaining categories of items covered without reference to value* cannot be explained by their dangerous character or their facility in commission of other crimes. The provisions of *Penal Code Section 487d* relating to *gold dust, amalgam or quicksilver* can be traced through the 1872 Code, and perhaps beyond, to frontier gold-mining days. The only conceivable explanation for its inclusion in the current Penal Code may be the lack of cases arising under it. There was no problem inducing repeal. In any event, there seems no reason to continue the category in a revised penal code.

<sup>43</sup> P.O.D. Sec. 223.1(2).

<sup>44</sup> N.Y. Pen. Law Sec. 155.30.

<sup>45</sup> Ill. Crim. C. Sec. 16-1.

<sup>46</sup> Wisc. Crim. C. Sec. 943.20(3)(d)(1).

<sup>47</sup> Tent. Draft No. 2, comment at pp. 112-113.

<sup>48</sup> While neither New York, Illinois nor Wisconsin make special provision for automobile theft, the smaller amounts specified for grand theft generally probably cover most automobiles worth stealing.

The category of *livestock* whose theft is grand theft without reference to amount raises a somewhat more difficult problem. The 1872 criminal code included any "horse, mare, gelding, cow, steer, bull, calf, mule, jack, jenny, goat, sheep, or hog." The categories of animals covered has been tinkered with from time to time—in 1895, 1919, 1929 and 1947. And, in 1943, protection against cattle rustlers was strengthened by adding grand theft penalties for stealing, taking or transporting the carcass of a "bovine, caprine, equine, ovine or suine animal or of any mule, jack or jenny" which belongs to another.<sup>49</sup> In other words, there has been enough legislative concern with the cattle rustler that the provisions cannot, like the provisions of *Penal Code Section 487d*, be dismissed as obsolete. One explanation may be that these animals are sometimes taken from open fields or range, and the burglary felony provisions applicable to many kinds of organized urban theft do not apply. Another reason may be simply a desire to give special protection to agricultural interests. It is hard to believe that currently the cattle rustler represents a special, dangerous or rampant form of crime. In summary no reason appears for continuing this provision for felony treatment of cattle thievery which would not otherwise constitute grand larceny, burglary or robbery.

Two classes of property use a \$50 dividing line between grand and petty theft rather than the \$200 line. First is real property converted into personal property by severance.<sup>50</sup> Second is the category of "domestic fowls, avocados, olives, citrus or deciduous fruits, nuts and artichokes."<sup>51</sup> Part of the reason may be largely historical.<sup>52</sup> It may be that the \$50 figure was also chosen by analogy to *Penal Code Sections 487b, 487c*, which would often be applicable to fruit picked from trees, etc. Again, the problem cannot be dismissed as obsolete. Olives were

<sup>49</sup> *Pen. C. Sec. 487a*. The section was expanded in 1953 to cover stealing, taking or transporting carcasses of animals "killed without the consent of the owner. . . ."

<sup>50</sup> *Pen. C. Secs. 487b, 487c*. The maximum penalties therein provided are somewhat higher than for ordinary grand and petty theft.

<sup>51</sup> *Pen. C. Sec. 487(1)*.

<sup>52</sup> *Pen. C. Secs. 487b and 487c*, dealing with conversion of real property into personal property, have continued nearly unchanged from the 1872 Code. When, in 1923, the \$50 figure in *Sec. 487* was raised to \$200, *Secs. 487b, 487c* were left unchanged at \$50. In 1935, perhaps as a reaction to depression problems, special provision was made for grand theft treatment of theft of 100 pounds or more of avocados or citrus or deciduous fruit. *Stats. 1935, ch. 435, p. 1484, sec. 1*. In 1939, this special provision was repealed. But these items, along with nuts and artichokes, were added to the provision of *Sec. 487* which, at that time, provided a special \$50 figure for domestic fowls. *Stats. 1939, ch. 371, p. 1708, sec. 1*.

added to the list in 1957.<sup>53</sup> If there are reasons for the special treatment of agricultural products, other than historical ones, they are likely to be the same as those advanced for special treatment of the cattle rustler. Accordingly, the draft follows the Model Penal Code in not extending special treatment to any class of property other than motor vehicles and firearms.

*Grading with reference to the nature of the conduct.* Within the scope of the offenses covered by this memorandum, California now provides for felony punishment without reference to the value of the property taken in the following circumstances: taking property from the person of another;<sup>54</sup> stealing of a dog for the purposes of sale, medical research or other commercial purpose;<sup>55</sup> receiving stolen property;<sup>56</sup> embezzlement of public funds;<sup>57</sup> and extortion.<sup>58</sup> In comparable cases, where the value of the property taken is less than \$500, the Model Penal Code imposes felony penalties only where the receiver of stolen property is in the business of buying or selling stolen property.

In the draft, the principle has been followed that the number of theft offenses where felony treatment is afforded theft of less than \$500 should be kept to a minimum, and that it should require a strong showing to classify theft of less than \$500 as a felony because of the nature of the actor's conduct or of his specific intent. For example, with reference to the theft of dogs for the purposes of sale, *Penal Code Section 487g* appears to represent a legislative choice that should not be reflected in the draft of a revised code. With reference to receiving of stolen property, there seems no reason to punish the receiver more harshly than the thief where the receiver is not a "fence," in the business of buying or selling stolen property. Accordingly, the draft reflects the position of the Model Penal Code.

The remaining three classes encompassed by present California law present more difficult policy choices.

*Taking property from the person of another* is a felony not only in California but also, *i.e.*, in New York,<sup>59</sup>

<sup>53</sup> Stats. 1957, ch. 1794, p. 3184, sec. 1.

<sup>54</sup> *Pen. C. Sec. 487(2)*.

<sup>55</sup> *Pen. C. Sec. 487g*. Compare *Secs. 487c, 487f, 491* which, taken together, by a process of overkill, establish \$200 as the dividing line for other cases of dog theft.

<sup>56</sup> *Pen. C. Sec. 496*.

<sup>57</sup> *Pen. C. Sec. 514*.

<sup>58</sup> *Pen. C. Sec. 520*.

<sup>59</sup> *N.Y. Pen. Law Sec. 155.30(4)*.



Illinois,<sup>60</sup> and Wisconsin.<sup>61</sup> Initial drafts of the Model Penal Code did not recognize theft from the person as an aggravating circumstance to ordinary theft.<sup>62</sup> However, some members of the American Law Institute took the position that all theft from the person or by threat should be punishable as a felony. The compromise accordingly adopted in the Proposed Official Draft of the Model Penal Code was to make theft from the person and by threat a misdemeanor even if the amounts involved were less than \$50. The questions to be decided, then, are whether theft "from the person" is an aggravating circumstance and, if so, whether it justifies felony treatment of all such theft. The effect of the provision is to reach the pickpocket and the purse-snatcher.<sup>63</sup> One reason for treating theft from the person as a felony regardless of amount may be because it is judged that such theft involves a chance of violence or breach of the peace. In reply, it would seem that the major instances of theft from the person which involve serious threats of violence or personal injury are covered by the robbery statute. Another explanation may be that the pickpocket and purse-snatcher are often professional criminals or recidivists justifying their treatment as felons regardless of the size of the amount taken in an individual transaction. To a large extent, these goals of the present law can be accomplished by the provisions of this draft which permit aggregation of amounts involved in thefts "committed pursuant to one scheme or course of conduct." Moreover, more rational treatment of the recidivist problem would be under some provision like *Section 6.09 of the Model Penal Code* which provides generally for extended terms in cases, among others, where the defendant is a recidivist.<sup>64</sup> Thus, this draft follows the Model Penal Code in not extending felony provisions to theft from the person. The question then remains whether there is any merit in the approach of the Model Penal Code which is to treat theft of less than \$50 from the person as a misdemeanor. Perhaps, theft from the person is a sufficient aggravation of ordinary theft that it should not be

<sup>60</sup> Ill. Crim. C. Sec. 16-1.

<sup>61</sup> Wisc. Crim. C. Sec. 943.20(3)(d)(2).

<sup>62</sup> See Tent. Draft No. 2.

<sup>63</sup> See, e.g., *People v. Herrin*, 82 Cal. App. 2d 795, 187 P. 2d 26, (1947); *People v. Haddox*, 83 Cal. App. 2d 459, 189 P. 2d 83, (1948).

<sup>64</sup> See *Model Pen. C. Sec. 7.04*.

treated as a petty misdemeanor even where the amount stolen is less than \$50. And, perhaps, this treatment can be justified because it permits somewhat more extensive confinement for the recidivist.<sup>65</sup> Perhaps the Model Penal Code provisions is simply a compromise between those who felt that theft from the person is irrelevant, and those those who believed in felony treatment.

*The choices involved in dealing with theft by extortion* raise problems quite similar to those involved in treating theft from the person. The two issues do not, however, necessarily rise or fall together. All theft by extortion is a felony under existing California law.<sup>66</sup> While the revised Illinois Code does not recognize extortion as an aggravation of theft,<sup>67</sup> both New York<sup>68</sup> and Wisconsin<sup>69</sup> treat all extortion as felonies.<sup>70</sup> As indicated, the approach of the Model Penal Code is to treat theft "by threat" as a sufficient aggravation that such theft of less than \$50 is a misdemeanor.<sup>71</sup> It may be clearer in the case of extortion that the kinds of threats (such as immediate violence) which are likely to lead to violence and breach of the peace are sufficiently treated in the robbery statute. On the other hand, some of the threats characterized as extortion may be considered so serious that felony treatment is appropriate regardless of the amount taken.<sup>72</sup> But a strong argument can be made that even the threat of violence, if it is not so immediate as to bring the theft within the robbery statute, is not a sufficient aggravation to raise all such theft to the felony level.<sup>73</sup> And, when there is legitimate controversy whether some threats should be the subject of the extortion statute at all, it seems clear that not all extortion threats represent such

<sup>65</sup> See *Model Pen. C. Sec. 6.09*.

<sup>66</sup> *Pen. C. Sec. 520*.

<sup>67</sup> *Ill. Crim. C. Sec. 16-1*.

<sup>68</sup> *N. Y. Pen. Law Sec. 155.30(5)*.

<sup>69</sup> *Wisc. Crim. C. Sec. 934.30*.

<sup>70</sup> Moreover, in New York, certain forms of extortion are first degree felonies. *N.Y. Pen. Law Sec. 155.40*. This covers only certain forms of extortion. Compare *Sec. 934.31*.

<sup>71</sup> As in the case of theft from the person, *Tent. Draft No. 2 of the Model Pen. C.* rejected aggravation of ordinary theft by extortion, and the provision of the Proposed Official Draft was explained as a "middle position" between that of *Tent. Draft No. 2* and that of those who argued that all extortion should be treated as a felony. P.O.D., comment at p. 166. It is interesting that the Ill. Crim. C. revision, which follows the Model Pen. C. more closely than revised Wisconsin or New York law, followed the Model Pen. C. in not treating extortion of less than the grand theft amount as a felony, while it rejected the Model Penal Code's decision not to treat theft from the person as a felony.

<sup>72</sup> As indicated New York and Wisconsin distinguish in treatment between certain forms of extortion.

<sup>73</sup> See Note, *The Law of Aggravated Theft*, 54 Colum. L. Rev. 84, 104-105 (1954).



an aggravation that felony treatment is appropriate regardless of the amount involved. To provide that some threats, short of robbery, require felony treatment regardless of the amount involved while others do not, would introduce undue complexity into the statutory scheme. Other arguments for treating extortion as an aggravation of theft would appear to be similar to those raised with reference to theft from the person. The draft accepts the position of the Model Penal Code on extortion, in not treating extortion of less than \$500 as a felony, and also accepts the Model Penal Code's decision to treat extortion of less than \$50 as a misdemeanor.

*California treats all embezzlements of public funds as a felony.*<sup>74</sup> Other theft by breach of fiduciary duty is treated as unaggravated theft. The Model Penal Code does not classify theft of less than \$500 in breach of a fiduciary obligation as a felony, but theft of less than \$50 "in breach of a fiduciary obligation" is a misdemeanor. In *Tentative Draft No. 2*, the Model Penal Code treated all theft in breach of trust as a felony.<sup>75</sup> Felony treatment of fiduciary theft was explained in *Tentative Draft No. 2* on the ground that the actor was "guilty of a breach of trust as well as a disregard of ordinary compunctions with respect to other people's property."<sup>76</sup> Reducing the grade of theft of less than \$500 in breach of trust was explained in the Proposed Official Draft on the ground of arriving at a "uniform policy" for aggravated theft including theft by extortion and from the person.<sup>77</sup> No comparable provisions appear in the law of Illinois, New York or Wisconsin.

Treating fiduciary theft of government property more seriously than other fiduciary theft can be explained only with reference to a special policy of protection of the public fisc. It is hard to accept the proposition that the postal clerk who embezzles a few dollars is a more dangerous or immoral offender than the bank official who does the same thing. It would appear, then, that the least defensible alternative is to continue the position of current California law which treats misappropriation

<sup>74</sup> *Pen. C. Secs. 424, 514.*

<sup>75</sup> It provided for felony treatment in all cases where "the actor is, a fiduciary in relation to the stolen property," and where "the property is that of the government or of a credit institution and the actor was entrusted with safekeeping of the property or with a discretionary responsibility for its disposition." *Model Pen. C., Tent. Draft No. 2, Sec. 206.15(4).*

<sup>76</sup> *Id.*, comment at p. 112.

<sup>77</sup> P.O.D. at p. 166.

of government property as more serious than other forms of fiduciary theft. Since it has not been California policy in the past to treat all fiduciary theft as a felony regardless of amount, the question remains whether the Model Penal Code's explanation of such a policy is persuasive. The only reason given—that such theft involves a breach of trust—is circular and conclusory. Thus, while the draft would change current California policy with reference to fiduciary theft from the government, it would follow California's policy in not treating fiduciary theft generally as an aggravation to theft.

*Valuation of property.* The Model Penal Code provides for valuation of the amount of property involved in theft by "the highest value by any reasonable standard, of the property or services which the actor stole or attempted to steal." By way of contrast, California law provides "the reasonable and fair market value shall be the test, and in determining the value of services received the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern."<sup>78</sup> There are also special valuation provisions.<sup>79</sup> Illinois has no general valuation provision. New York's revision retains, from earlier law, a definition of "market value . . . at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement . . ."<sup>80</sup> Wisconsin provides similarly that value is "market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less."<sup>81</sup>

The Comment to *Tentative Draft No. 2 of the Model Penal Code* explains the provision on valuation as follows:

The first sentence of subsection (2) is intended to forestall defense contentions that a finding of value in excess of the critical figure should be set aside because the court used one standard of value rather than another. The value test is such a rough one at

<sup>78</sup> *Pen. C. Sec. 484.*

<sup>79</sup> *Secs. 491* (dogs), *492* (evidence of debt, or other written instrument), *493* (passage tickets) and *496c* (private real estate title records). All but the last, enacted in 1931, date from the 1872 *Penal Code*.

<sup>80</sup> *N.Y. Pen. Law Sec. 155.20(1)*. There is a further special provision for valuing written instruments which have no readily ascertainable market value. *N.Y. Pen. Law Sec. 155.20(2)*.

<sup>81</sup> It also has a special provision for valuing documents evidencing a chose of action or other intangible right. *Wisc. Crim. C. Sec. 943.20(2)(c)*.

best that a trial court's standard should be accepted unless clearly arbitrary.

The inter-related questions to be decided are whether the Model Penal Code's "highest value, by any reasonable standard" should be substituted for the California "market value" standard and whether the special valuation provision of the Penal Code should be continued.

It is doubtful whether, in the ordinary case, a distinction between "market value" and "highest value, by any reasonable standard" will make a significant difference in result. However, continuation of a market value standard would probably require the retention of existing specific statutory standards for such items as negotiable instruments, where loss to the owner exceeds value on the open market.<sup>82</sup>

*Aggregating amounts in determining grade of offense.* Section 223.1(2)(c) of the Model Penal Code provides, in relevant part, that: "Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense." There is no similar general provision in present California law, although *Penal Code Section 487* was amended in 1955 to provide that it shall constitute grand theft "where the money, labor, real or personal property is taken by a servant, agent or employee from his principal or employer and aggregates two hundred dollars (\$200) or more in any 12 consecutive month period. . . ." <sup>83</sup> The Illinois, New York and Wisconsin statutes have no provision of the theft statute permitting aggregation.

The Model Penal Code aggregation provision was explained as follows:

The scope of the actor's disregard of property rights cannot always be judged by looking only at the amount which he takes at a single moment from a single person. The bank teller who day after day steals a \$20 bill from his employer will have \$600 at the end of a month, and is clearly engaged in felonious theft. The driver of a department store delivery truck containing hundreds of parcels, each

<sup>82</sup> Under existing California Law, in the case of larceny of written instruments, value is defined as the amount due or secured by the instrument. *Pen. C. Sec. 492*. Under *Pen. C. Sec. 496c*, the value of stolen private real estate title records is defined to be the cost of acquiring and compiling the records.

<sup>83</sup> Stats. 1955, ch. 1249, p. 2282, sec. 1.

worth less than \$50, ought not to be regarded as a petty thief, guilty of multiple offenses, when he sells the contents of the truck to a "fence" and makes off with the proceeds. A swindler who moves along the street cheating housewives out of individually petty amounts is in the same situation, criminologically, although both the place and the victim change with each transaction. Subsection (3) adopts unity of victim and unity of scheme or course of conduct, as alternative bases for determining the scope of the actor's thieving. In doing so, it steers a middle ground between rigid common law requirements of unity of place, time and victim on the one hand, and the unlimited aggregation offered by the Louisiana Code.<sup>84</sup>

California decisions have, likewise, rejected the common law requirements of unity of place, time and victim. The test is whether the separate amounts taken were taken under "one general intent" or "separate and distinct intents."<sup>85</sup> Although the search of the California cases for "one intention," "one general impulse," or "one plan," seems quite similar to the Model Penal Code's language of "one scheme or course of conduct," the comment to the Model Penal Code quoted above would seem to permit a larger scope of aggregation than that permitted by the California cases. In the case of thefts by an employee from his employer for example, prior to the 1955 amendment to *Penal Code Section 487*, consecutive thefts from an employer could not be aggregated unless the thefts were traced to some single motivating source, such as a grievance over demotion or wages.<sup>86</sup> Probably, the limited scope of permitted aggregation of small employee thefts led to the 1955 amendment permitting unlimited aggregation during any 12 month period.

There may be some question under existing California law, whether aggregation would be permitted in a case where a "swindler . . . moves down the street cheating housewives of individually petty amounts." In *People*

<sup>84</sup> *Tent. Draft No. 2*, comment at pp. 111-112.

<sup>85</sup> *People v. Bailey*, 55 Cal 2d 514, 360 P. 2d 39 (1961) [previous cases are collected *id.* at 518-519].

<sup>86</sup> *People v. Howes*, 99 Cal. App. 2d 808, 222 P. 2d 969 (1950); *People v. Yachimowicz*, 57 Cal. App. 2d 375, 134 P. 2d 271 (1943).



*v. Sichofsky*,<sup>87</sup> conviction of multiple grand theft from two victims was affirmed although the money from both victims was obtained as part of a single fraudulent scheme, because both victims were not present when particular false representations were made. It should be noted that the case involves the problem of multiple grand thefts in a single transaction, rather than that of aggravating small amounts to make a single grand theft.

One reason for the somewhat more conservative aggregation permitted by the California cases is that the "one intention" test serves two disparate purposes. In cases involving multiple small thefts, it is the prosecution pushing aggregation for the purpose of putting together the amount required for grand theft. In cases involving multiple large thefts, the aggregation argument is a defense ploy to argue that not many but one grand theft occurred. One way of building flexibility into the double-edged "one intention" test has been to treat the issue as factual, and leave large discretion to the jury under a general instruction. There is no need for a single standard to govern both problems. The issues of harrassment and multiple punishment involved in the multiplication of offenses in single or related transactions<sup>88</sup> are not the same as those concerning whether multiple small thefts should be aggravated to grand theft. The problems of multiple punishment in the single transaction are not treated in this section of the statute. Because that problem is so different, rules or doctrines developed for that situation ought not to control the rule for aggregating small thefts to grand theft.

One solution for the multiple petty theft problem is to provide, as in the Louisiana Code, unlimited aggregation of theft offenses. *Penal Code Section 487* now provides this for employee thefts occurring within a 12 month period. *Penal Code Section 476a* makes similar provision for aggregation of bad checks.<sup>89</sup> The unlimited aggregation of distinct and unrelated thefts, however, would seem unwise—particularly if a provision modeled on *Model Penal Code Section 6.09* were enacted to handle

<sup>87</sup> 58 Cal. App. 257 (1922).

<sup>88</sup> See, e.g., McKissack, *The Included Offense Doctrine in California*, 10 U.C.L.A. L. Rev. 870 (1963).

<sup>89</sup> The mechanism is to provide for felony treatment in *Subdivision (a)*, with a proviso for misdemeanor punishment in *Subdivision (b)* if the total amount of bad checks is less than \$100. For the problems of interpretation posed by this provision, see *In re Dick*, 64 Cal. 2d 272, 411 P. 2d 561 (1966); *In re Watkins*, 64 Cal. 2d 866, 415 P. 2d 805 (1966).

the problem of sentencing and treatment of repetitive misdemeanors.

The Model Penal Code provision appears, generally, to be a sensible compromise. It employs a standard not entirely dissimilar from that under California decisions, but appropriate comment to the code could make it clear that it intended to broaden the standard. Language providing that offenses "may" be aggregated serves to differentiate the other aspects of the multiple offense problem by shifting the emphasis from the question whether a single offense or multiple offenses have occurred. To the Model Penal Code provision has been added a provision for the case of employee theft carrying forward, in substance, the existing provisions of *Section 487 of the California Penal Code*.<sup>90</sup>

*Petty theft after prior theft or felony conviction.* Although not part of the substantive theft provisions of the California Penal Code, the provisions of *California Penal Code Sections 666, 667* form an integral functional part of the scheme for distinguishing grand theft from petit theft. *Section 666*, in relevant part, provides for felony treatment of petit theft convictions following a previous conviction of petit theft, as follows:

[PUNISHMENT OF OFFENDER PREVIOUSLY CONVICTED OF PETIT LARCENY OR PETIT THEFT.] Every person who, having been convicted of petit larceny or petit theft and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for such offense, commits any crime after such conviction is punishable therefor as follows:

3. If the subsequent conviction is for petit theft, then the person convicted of such subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the State prison not exceeding five years.

*Section 667* provides for felony treatment of petit theft following previous conviction of felony, as follows:

[PUNISHMENT OF PERSON COMMITTING PETTY THEFT AFTER CONVICTION OF FEL-

<sup>90</sup> The bad check problem is not covered by this section of the draft statute.

ONY.] Every person who, having been convicted of any felony either in this State or elsewhere, and having served a term therefor in any penal institution, commits petty theft after such conviction, is punishable by imprisonment in the county jail not exceeding one year or in the State prison not exceeding five years.<sup>91</sup>

In Illinois, a similar provision provides for felony treatment of petit theft following prior conviction of grand or petit theft.<sup>92</sup>

The justification for these provisions is probably two-fold. First, that petit theft is a particularly egregious offense so that the first offense should carry a particularly heavy penalty in terms of a warning that future felony treatment will follow future convictions. Second, that the person who commits petit theft following a prior felony or theft has shown sufficient evidence of criminality that felony treatment is appropriate.<sup>93</sup>

The provisions detailed above are of pointless severity. Occasional reports of penitentiary sentences in supposedly unenlightened states for such minor thefts as stealing a pack of cigarettes are also possible in California, where it is possible to be sentenced for five years for stealing *two* sticks of gum—provided that the defendant had first served a jail term for stealing the first stick. The provisions of *Sections 666, 667* should not survive revision of the Penal Code. If extended terms for petit theft are imposed, they should be imposed only if the criteria of a general provision<sup>94</sup> for extended terms for misdemeanants are met.

### Claim of Right

With reference to claim of right, *Proposed Official Draft Section 223.1(3)* provides as follows:

It is an affirmative defense to prosecution for theft that the actor:

(a) was unaware that the property or service was that of another; or

<sup>91</sup> See also *Sec. 668* dealing with previous convictions of felony in other jurisdictions.

<sup>92</sup> *Ill. Crim. C. Sec. 16-1*.

<sup>93</sup> In a brief stint as a deputy district attorney served by the author of this memorandum, the severity of treatment afforded petit theft was a reason for charging some offense other than theft—such as trespass—for some first offenders, or failing to allege a prior conviction for second offenders.

<sup>94</sup> Such as *Model Pen. C. Sec. 7.04*.

(b) acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(c) took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing the owner, if present, would have consented.

The general provisions on claim of right restate California law. It is a specific statutory defense to embezzlement that the defendant appropriated the property under a claim of title, and did so openly and avowedly even though the claim was untenable.<sup>95</sup> While there is no similar specific language with reference to larceny, the requirement that the defendant must "feloniously steal"<sup>96</sup> is sufficient to introduce the claim of right defense.<sup>97</sup> There is no clear authority with reference to claim of right in the context of theft by false pretenses.<sup>98</sup>

Two significant policy decisions would be involved in adoption of *Proposed Official Draft Section 223.1(3)*. First, it would abrogate the provision of *Penal Code Section 511* which limits the claim of right defense in embezzlement cases in cases of claimed offset. Second, it may extend California law with reference to claim of right in the situation dealt with in *Proposed Official Draft Section 223.1(3)(c)*.

*Penal Code Section 511* provides that the defense of claim of right to embezzlement "does not excuse the unlawful retention of the property of another to offset or pay demands held against him." Thus, the defendant has no right to take money within his control to pay himself a debt claimed owing to him.<sup>99</sup> This provision is, no doubt, premised on the argument that a general claim of right defense in embezzlement cases would unduly encourage those entrusted with money to retain funds given them for other purposes. *Penal Code Section 511*, however, applies only to embezzlement, and the general claim of right defense to larceny will include cases where the

<sup>95</sup> *Pen. C. Sec. 511, People v. Lapique*, 120 Cal. 25, 26, 52 Pac. 40 (1898); *People v. Proctor*, 169 Cal. App. 2d 269, 276, 337 P. 2d 93 (1959).

<sup>96</sup> *Pen. C. Sec. 484*.

<sup>97</sup> *People v. Devine*, 95 Cal. 227, 231, 30 Pac. 378; *People v. Photo*, 45 Cal. App. 2d 345, 114 P. 2d 71 (1941).

<sup>98</sup> With reference to extortion, *P.O.D. Sec. 223.4* has a special claim of right defense. It will be discussed with reference to the general discussion of extortion.

<sup>99</sup> *People v. Ranney*, 123 Cal. App. 403, 409, 11 P.2d 405 (1932).



defendant takes money to satisfy claims against the person from whom he took it.<sup>100</sup> If the limitation on the claim of right defense in *Penal Code Section 511* makes sense, it probably ought not to be limited to embezzlement but should be extended to other forms of theft. Adoption of the Model Penal Code formulation would apply the claim of right defense generally to set-off situations, including embezzlement.

There is no specific statutory provision in California law like that in *Proposed Official Draft Section 223.1(3)(c)* which specifically applies the claim of right defense to cases where the defendant "took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing the owner, if present, would have consented." Nor do any California cases either accept or reject the defense on facts which would fall within this section.<sup>101</sup> The claim of right provision is not intended generally to make intent to pay later a defense, except in the situation of property exposed for sale, and then only if there is an intent to pay "promptly." Since intent to pay for goods taken is not generally a basis of claim of right, there is some argument for a specific provision of the claim of right defense where goods are exposed for sale, and the defendant intends to pay "promptly." In those situations where the customer believes that the owner of the property would consent, the general claim of right section, or the requirement of intent, would provide the basis for a defense without this provision. This section, however, goes farther, as explained by the commentary to *Tentative Draft No. 2 of the Model Penal Code*.

Most of the situations to which the provision would be applicable would fall outside theft anyway, on the ground of the owner's real or supposed consent; for example, the customer who helps himself to a newspaper from a stand, without leaving his coin because he has no cash smaller than a \$10 bill, or the buyer who, finding no one in the store free to wait on him, walks off with the desired article,

<sup>100</sup> *People v. Morely*, 89 Cal. App. 451, 265 Pac. 276 (1928). The defense will be available even in cases of armed robbery. *People v. Butler*, 65 Cal. 2d 569, 55 Cal. Rptr. 511, 421 P.2d 703 (1967).

<sup>101</sup> There are two cases which hold that it is no defense to a claim of theft by false pretenses that defendant intended to pay when able. *People v. Weiger*, 100 Cal. 352, 34 Pac. 826 (1893); *People v. Bowman*, 24 Cal. App. 781, 142 Pac. 495 (1914). See the discussion of this issue under the heading of "Deprive," *supra*.

meaning to return the next day to pay. But the section goes beyond these cases, precluding theft prosecution where consent of the owner can actually be negated, as where the news vendor has on previous similar occasions made it clear to the actor that no papers are ever to be taken without payment. An actor who disregards such an injunction ought nevertheless not be regarded as a thief. His purpose is not in any sense fraudulent. There is no question as to his solvency, his willingness to pay, or for the vendor's willingness to be rid of the goods in exchange for pay. Broader statements sometimes made that intent to pay negatives the fraudulent state of mind required for theft will generally be found to be supported only by cases of this kind. It would clearly be unwise to permit the defense of intent to pay when a man obtains goods by a false credit statement, or a fiduciary "borrows" money or securities from the estate, or a depositor persuades a bank cashier to honor overdrafts after the bank president has denied him credit.<sup>102</sup>

The general structure, then, is to deny the claim of right defense to the person who intends to repay, absent the owner's assumed consent, except in the limited circumstances covered by *Proposed Official Draft Section 223.1(3)(c)*. Serious questions can be asked whether such a provision is necessary, in that it applies to only a limited class of cases. And, if intent to pay is not generally a defense, in cases where the owner has clearly objected, it may be asked whether the actor should be exempted from theft penalties even in the narrow situation where goods are offered for sale, and the actor intends to pay "promptly."

### Theft From Spouse

*Proposed Official Draft Section 223.1(4)* provides:

It is no defense that theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

<sup>102</sup> *Tent. Draft No. 2*, comment at pp. 99-100.

The common law rule that unity between husband and wife precludes the possibility of theft has been rejected.<sup>102a</sup> The California community property system provides some additional complications which would not be solved by this section.<sup>103</sup>

### Theft by Deception

*False Promises.* The most significant feature of the definition of deception in *Proposed Official Draft Section 223.3* is already a feature of California law. That section provides that a person deceives if he purposely:

(a) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform his promise . . .

In *People v. Ashley*<sup>104</sup> the court held that deliberately false promises were a misrepresentation of an existing state of mind and, as such, false pretenses. The last sentence of *Section 223.3(4)* is consistent with the *Ashley* opinion's concern that ordinary commercial defaults not be subject to criminal penalty.

*Law, value and opinion.* California cases recite that expressions of opinion are not subject to false pretense liability. Those cases, however, can be explained as based on pre-*Ashley* assumptions that states of mind were not subject to misrepresentation, or factually involved instances of sellers' talk.<sup>105</sup> The problem of sellers' talk is specifically treated in *Proposed Official Draft Section 223.3*, in the provision that the term "deceive" does not include "falsity as to matters having no pecuniary sig-

<sup>102a</sup> *People v. Graff*, 59 Cal. App. 706, 211 Pac. 829 (1922).

<sup>103</sup> Apparently, in the case of appropriation either of community property within the control of the other spouse, or of the other spouse's separate property, the issue is whether the acting spouse used the appropriated property for the community. *People v. Crowder*, 126 Cal. App. 2d 578, 272 P.2d 775 (1954); *People v. Brierton*, 132 Cal. App. 471, 23 P.2d 63 (1933).

<sup>104</sup> 42 Cal. 2d 246, 267 P.2d 271, (1954).

<sup>105</sup> See, generally, *People v. Jones*, 36 Cal. 2d 373, 377, 224 P.2d 353 (1950). In *People v. Daniels*, 25 Cal. App. 2d 64, 76 P.2d 556 (1938), it was held that a vendor's false opinion that land was oil-producing did not constitute false pretenses because it was a misrepresentation of mere opinion. Compare *People v. Gordon*, 71 Cal. App. 2d 606, 163 P.2d 110 (1945), where it was held that expressions of opinion were equivalent to assertions of fact when the vendor assumed to possess superior knowledge which his vendee did not have equal opportunity to gain; *People v. Davis*, 112 Cal. App. 2d 286, 246 P.2d 160 (1952), where it was held that opinion given concomitantly with statements of fact supporting the opinion would support a prosecution for theft by false pretenses.



nificance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.”

There are no California false pretense cases precisely on point with reference to the question whether misrepresentations of law can be the basis of a theft by false pretenses prosecution. There is no good reason why a misrepresentation as to law which has a pecuniary significance, and which is not puffing or sellers’ talk, and which is deliberately made with intent to deceive, should not be treated as a false pretense.<sup>106</sup>

*Reinforcing false impression. Proposed Official Draft Section 223.3* does not, generally, classify as false pretenses the mere failure to correct a false impression, unless the omission falls within the cases specified in Subsections (2)–(4). As will appear below, reasons can be advanced which justify a distinction, generally, between omissions and affirmative false impressions. No reasons, however, can justify a distinction, for criminal law purposes, between creating and affirmative reinforcing of a false impression.<sup>107</sup> No California cases are precisely in point.<sup>108</sup>

*Omissions—Non-disclosure.* The Proposed Official Draft definition of false pretenses does not generally create an obligation to disclose when the person who obtains property knows that the other party to the transaction is acting under a material mistake of fact. The reason for this is that taking advantage of a known mistake is often acceptable business behavior. In the absence of a clear consensus to draw the line between omissions to disclose which are acceptable business behavior, “sharp practices,” or criminal behavior, the appropriate policy is for the criminal law to ignore the great bulk of omissions to disclose. The “exceptions” in *Proposed Official Draft Section 223.3(2)–(4)* for the most part represent cases where the defendant has engaged in affirmative conduct,<sup>109</sup> or where silence is equivalent to affirmative misrepresentation.<sup>110</sup> If there is a controversial policy choice to be made, it may be with reference to the provision of *Proposed Official Draft Section 223.3(3)*, which provides that

<sup>106</sup> *Tent. Draft No. 2*, comment at pp. 70–71.

<sup>107</sup> See *Tent. Draft No. 2*, comment at p. 66.

<sup>108</sup> Enactment of the false pretense definition of the P.O.D. would make unnecessary the provision of *Pen. C. Sec. 532(a)(3)* that it is a false pretense to represent that a financial statement in writing is true of conditions at a later date.

<sup>109</sup> Preventing another from acquiring information, failing to correct a false impression previously created or reinforced.

<sup>110</sup> Failing to disclose a lien on transferring or encumbering property.



it is deception to fail to correct a false impression which the deceiver knows is influencing "another to whom he stands in a fiduciary or confidential relationship."<sup>111</sup> California law, however, already reflects this concept.<sup>112</sup>

There is some question whether the fiduciary provision would cover the situation treated in the last sentence of *Penal Code Section 484(a)*, which provides: "The hiring of any additional employee or employees without advising each of them of every labor claim due and unpaid and every judgment that the employer has been unable to meet shall be prima facie evidence of intent to defraud." In any event, the prima facie evidence provision would not be reflected in the general terms of *Proposed Official Draft Section 223.3*. For false pretense purposes, there seems to be little reason for special treatment of this situation.

### Theft by Extortion

*California Penal Code Section 519* and *Proposed Official Draft Section 223.4* have a similar structure—a listing of specified threats which constitute extortion, coupled with a general "catch-all" definition for the unenumerated threats. There are five differences. First, the list of specifically enumerated threats in the Proposed Official Draft is longer. Second, the catch-all provision of the Proposed Official Draft includes threats to inflict "any other harm which would not benefit the actor," whereas the Penal Code speaks of "unlawful injury." Third, the Penal Code requires, with reference to threats to accuse of crime, to expose any deformity or disgrace, or to expose any secret, that the threat be of injury to the person threatened or to a relative or member of his family.<sup>113</sup> In the catch-all provision reaching threats to do "unlawful injury," the injury may be to the person threatened or "a third person."<sup>114</sup> The Proposed Official Draft, in all of its sections, reaches threats of injury to anyone. Fourth, the Proposed Official Draft has a specific affirmative defense where the property obtained was

<sup>111</sup> *The Ill. Crim. C. of 1961, Sec. 15-4*, substantially adopts the P.O.D. definition of deception, with the exception of the fiduciary provision.

<sup>112</sup> In *People v. Mace*, 71 Cal. App. 10, 21, 234 Pac. 841 (1925) the court relied on *Civ. C. Sec. 1710(3)*, which provides that "suppression of a fact by one who is bound to disclose it or who gives information of other facts which are likely to mislead for want of communication of that fact" is deceit. See also *People v. Gordon*, 71 Cal. App. 2d 606, 626, 163 P.2d 110 (1945).

<sup>113</sup> *Pen. C. Secs. 519(2)-(4)*.

<sup>114</sup> *Pen. C. Sec. 519(1)*.

honestly claimed as restitution or indemnification. Fifth, the Proposed Official Draft covers only obtaining of money by threat, while *Penal Code Section 518* extends extortion to obtaining the official act of a public officer by threat.

*Specific threats.*

*Bodily injury or other criminal offense.* Proposed Official Draft Section 223.4(1) covers threats to "inflict bodily injury on anyone or commit any other criminal offense." The substance of this class of threats falls within *Penal Code Section 519(1)*, which covers threats to "do an unlawful injury to the person or property of the individual threatened or of a third person."

*Accusation of crime.* Proposed Official Draft Section 223.4(2) covers threats to "accuse anyone of a criminal offense." Accusations of crime are now specifically mentioned in *Penal Code Section 519(2)*, and threats to expose the commission of a crime are specifically mentioned in *Penal Code Section 519(3)*.

*Defamation.* Proposed Official Draft Section 223.4(3) covers threats to "expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute." *Penal Code Sections 519(3) and 519(4)* cover substantially the same ground, reaching threats "to expose . . . any deformity, disgrace or crime" and "to expose any secret . . ." <sup>115</sup> It should be mentioned that theft penalties for extortion under threat of defamation are not inconsistent with the decision not to apply criminal penalties to defamation as such. <sup>116</sup>

*Official action.* Proposed Official Draft Section 223.4(4) reaches threats to "take or withhold action as an official, or cause an official to take or withhold action." While no specific subdivision of *Penal Code Section 519* enu-

<sup>115</sup> While there is no specific provision dealing with a secret tending to impair credit or business repute in the Penal Code, California law reaches such threats. *People v. Cadman*, 57 Cal. 562 (1881). Moreover, the undefined "secrets," in *Pen. C. Sec. 519(4)* have been defined as being those secrets which "must be unknown to the general public, or to some particular part thereof which might be interested in obtaining knowledge of the secret; the secret must contain some matter of fact relating to things past, present or future; the secret must affect the threatened person in some way so far unfavorable to the reputation or to some other interest of the threatened person, that threatened exposure thereof would be likely to induce him through fear to pay out money or property . . ." *People v. Lavine*, 115 Cal. App. 289, 295, 1 P.2d 496 (1931); see also *People v. Peniston*, 242 Cal. App. 2d 719, 51 Cal. Rptr. 744 (1966).

<sup>116</sup> "Although the prescribed behavior is closely related to defamation, it is much broader in scope. Whereas the publication of defamation is often privileged, 'selling' forbearance from defamation can never be." *Tent. D. No. 2*, comment at p. 77.

merates such threats, obtaining property by such threats is extortion under California law.<sup>117</sup>

*Strike, boycott.* *Proposed Official Draft Section 223.4 (5)* covers threats to "bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act." There is no counterpart in the California statute. In the one California case in point, the conviction of a labor organizer was upheld where, to obtain money for his own personal use, he threatened labor unrest and strike.<sup>118</sup> Exempting demands on behalf of the organization, as opposed to purely personal demands—as the Proposed Official Draft does—is necessary to avoid subjecting lawful trade association or union bargaining to risk of criminal penalty on the ground that the group objective is "unlawful."<sup>119</sup>

*Giving or refusing testimony.* *Proposed Official Draft Section 223.4(6)* covers threats to "testify or provide information or withhold testimony or information with respect to another's legal claim or defense." No similar provision appears in *Penal Code Section 519*, and no California case deals with this precise threat. In cases of threats to testify in a criminal prosecution, this provision would parallel extortion by threats to accuse of crime, and would parallel provisions dealing with compounding a felony. As applied to civil cases, the desirability of this provision depends, to a large extent, on the question whether the catch-all provision should be limited to threats of "unlawful" action. If the provision of *Proposed Official Draft Section 223.4(7)*, reaching generally all threats of "harm which would not benefit the actor" is enacted, a threat to give or refuse testimony would simply be a specific example of such a threat.

*Unlawful injury.* The catch-all provision of *Penal Code Section 519(1)* covers threats to do "unlawful injury." No similar requirement of "unlawfulness" ap-

<sup>117</sup> *Matter of Accusation of Shephard*, 161 Cal. 171, 174, 118 Pac. 513 (1911) (threat of official action); *People v. Phillips*, 10 Cal. App. 2d 457, 51 P.2d 1120 (1935) (threat by bail bondman to keep prisoner incarcerated). *Pen. C. Sec. 518*, defining extortion generally, includes obtaining property "by a wrongful use of force or fear, or under color of official right."

<sup>118</sup> *People v. Bolanos*, 49 Cal. App. 2d 308, 310-311, 121 P.2d 753 (1942).

<sup>119</sup> *Tent. Draft No. 2*, comment at pp. 78-79. In the *Bolanos* case, *supra*, the defendant's object was to obtain money for his personal use. The court concluded that the threats were unlawful because defendant's demands were unrelated to the threatened union activity.



appears in the catch-all provision of the Proposed Official Draft, as *Section 223.4(7)* reaches threats to "inflict any other harm which would not benefit the actor." The need for some catch-all provision is obvious—no statute enumerating prohibited threats can be comprehensive enough to cover all threats used to extort.<sup>120</sup> The problem is to define the unenumerated threats. One way to approach the issue is to look at the characteristics of the threats concededly falling within the extortion statute. Some of those threats are clearly to do "unlawful" activity, such as threats to do bodily injury or to falsely accuse of crime. But, many of the threats are to do or refrain from doing something the actor would legally be privileged to do in the absence of an attempt to tie the threat to extortion of money. Accordingly, the Model Penal Code rejects any general requirement that the threatened harm be "unlawful."<sup>121</sup>

If the requirement of *Penal Code Section 519(1)* that threatened harm be "unlawful" is defined to exclude threats of harm which the actor would be privileged to inflict absent the attempt to obtain property from the victim, deleting the requirement would significantly extend California extortion law. There is some support for that definition.<sup>122</sup> But, in other cases, threats have been broadly defined to include implicit threats of unlawful harm coupled with explicit threats to do what the defendant was legally privileged to do.<sup>123</sup> At least in the case of threatened labor activity, acts which the actor is privileged to do are the basis of extortion when threat-

<sup>120</sup> The Model Penal Code commentary gives this example of threats which would not be covered by the specific subdivisions. "(a) the foreman in a manufacturing plant requires the workers to pay him a percentage of their wages on pain of dismissal or other employment discrimination; (b) a close friend of the purchasing agent of a great corporation obtains money from an important supplier by threatening to influence the purchasing agent to divert his business elsewhere; (c) a professor obtains property from a student by threatening to give him a failing grade." *Tent. Draft No. 2*, comment at p. 79.

<sup>121</sup> "The actor may be privileged or even duty-bound to inflict the harm which he threatens; yet, if he employs the threat of harm to coerce a transfer of property for his own benefit he clearly belongs among those to whom theft sanctions should be applied. The case of the policeman who is under a duty to make an arrest illustrates the point. His threat to arrest unless the arrestee pays him money is clearly extortionate although the policeman would be derelict if he did not arrest." *Tent. Draft No. 2*, comment on p. 75.

<sup>122</sup> In *People v. Schmitz*, 7 Cal. App. 330, 94 Pac. 407 (1908), defendant threatened his victim he would try to persuade liquor authorities not to grant him a liquor license. The court held there was no extortion since defendant had no legal duty not to try to persuade the Liquor Commission of anything he chose. (This threat would be expressly within the extortion definition of *P.O.D. Sec. 223.4(d)*.)

<sup>123</sup> In *People v. Sanders*, 188 Cal. 744, 207 Pac. 380 (1922), defendant police officer was accused of threatening to accuse complainant of violating a federal law and to imprison him. The threat to imprison was construed as a threat of unlawful imprisonment. And, in *People v. Camodeca*, 52 Cal. 2d 142, 147-148, 338 P.2d 903 (1959), a threat to procure revocation of a liquor license was construed as a threat to do so by unlawful means.



ened for the purpose of personal gain.<sup>124</sup> Moreover, with reference to those threats enumerated in *Penal Code Sections 519(2)–519(4)*—threats to accuse of crime and defame—it is irrelevant that the actor was privileged to do what he threatened. To the extent that a threat to do what the actor is privileged to do can be classified as a threat to defame, for example, the requirement of “unlawfulness” can be avoided. If the “unlawfulness” requirement of *Penal Code Section 519(1)* is taken seriously, California fails to reach cases of threatened harm which ought to be subject to an extortion statute. On the other hand, if some cases of threatened harm are “unlawful” or “lawful” depending on whether they are tied to an attempt to obtain money for personal gain, the requirement that the threatened harm be “unlawful” is circular.

An entirely open-ended category of threats, beyond the specified threats, would be undesirable, because it would include threats which no one considers extortion but legitimate economic bargaining—such as threats to change a will, refusal to deal, etc.<sup>125</sup> The general principle by which unenumerated threats are considered extortion is stated in *Proposed Official Draft Section 223.4(7)* to require a threat of “harm which would not benefit the actor.” This seems to state adequately the general principle by which the enumerated threats are considered extortionary. This provision was adopted in both Illinois<sup>126</sup> and New York.<sup>127</sup>

*Threats to third persons.* The Proposed Official Draft reaches threats of harm to anyone. *Penal Code Section 519* covers threats of “unlawful injury” to anyone, but requires that threats to defame or accuse of crime be threats with reference to the victim, a relative, or a member of his family. It is difficult to justify the distinction drawn by the California statute between threats to defame or accuse of crime, where the threatened harm must concern a limited group of persons, or threats of unlawful injury which may concern harm to anyone. If a consistent policy is to be pursued, the course adopted by

<sup>124</sup> *People v. Bolanos, supra*.

<sup>125</sup> See *Tent. Draft No. 2*, comment at p. 79.

<sup>126</sup> *Ill. Crim. C. Sec. 15-5(k)*.

<sup>127</sup> *N.Y. Pen. Law Sec. 155.05(e)(ix)*. (“any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business calling, career, financial condition, reputation or personal relationships.”)

the Proposed Official Draft seems most sensible—including threat of harm to any person which is intended to and in fact serves to induce the victim to part with property.<sup>128</sup> On this issue, both Illinois<sup>129</sup> and New York<sup>130</sup> have followed the Model Penal Code.

*Affirmative defense. Proposed Official Draft Section 223.4* provides that it is an affirmative defense to prosecution based on threats of accusation of crime, defamation, taking, withholding or causing government action, "that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services." The reason given for this affirmative defense, which was not reflected in *Tentative Draft No. 1* or *Tentative Draft No. 2*, is to provide generally for the

situation where a person asserting a civil claim to compensation for personal injury threatens to file a criminal complaint. The affirmative defense provided in the last sentence of the Subsection assures proper disposition of such cases, *i.e.*, it is made criminal to threaten prosecution if and only if the actor thereby obtains or attempts to obtain more than he believes is due him.<sup>131</sup>

A parallel policy is expressed in the Proposed Official Draft provision concerning compounding of a felony, which provides an affirmative defense where "the pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense."<sup>132</sup>

Preliminarily, it should be noted that the Proposed Official Draft provision with reference to extortion is not limited to threats of accusation of a criminal offense, or the invocation of official action, but is applicable to threats to expose secrets or impair credit or business repute, and threats to take or withhold action as an official. Nor is it limited in terms to the personal injury

<sup>128</sup> "... no defendant should escape liability for an effective intimidation on the ground that persons other than the chosen victim would not have been intimidated." *Tent. Draft No. 2*, comment at p. 75.

<sup>129</sup> *Ill. Crim. C. Sec. 15-5*.

<sup>130</sup> *N.Y. Pen. Law Sec. 155.05(e)*.

<sup>131</sup> *P.O.D. commentary* at p. 170.

<sup>132</sup> *P.O.D. Sec. 242.5*.

situation mentioned in the comment, but would apply equally to situations such as those where an employer charged an employee with theft. It does require, however, that the property be honestly claimed as restitution for harm done. This is explained in the commentary as intended to exclude the situation where the actor attempts to obtain more than was due him. It requires further that the harm for which compensation is sought be related to the accusation, exposure, lawsuit or other official action threatened.

Under California law, the general principle stated has been that accusations of crime constitute extortion, even if used as a means to collect a just debt. This is obviously sound in the situations where the threat and debt were unrelated.<sup>133</sup> It is likewise sound in the situation where the actor collects or attempts to collect more than is due him.<sup>134</sup> No case has been found which would fall squarely within the affirmative defense of the Proposed Official Draft, probably because such conduct is never prosecuted as extortion. There is nothing in the general statement of the principle in the cases which indicates, however, that it would be a defense if the threat and debt were related, and the actor claimed no more than he honestly believed due him.<sup>135</sup>

In some cases, prosecution for extortion where threats of exposure of crime are used to obtain restitution would be inconsistent with the policy of California law relating to compounding of a felony.<sup>136</sup> Just as in the case of compounding<sup>137</sup> it would probably surprise the average citizen that he committed a felony where he was the instigating party in an arrangement whereby he agreed not to report a crime in exchange for honest restitution of his damage from that criminal act. The general aversion to threats of criminal prosecution as a collection device can properly be reserved for those situations where the crime is unrelated to the claimed damage, or the offender seeks to collect more than is honestly due him.

<sup>133</sup> See *Lindebaum v. State Bar*, 26 Cal. 2d 565, 160 P.2d 9 (1945) (disciplinary action against attorney who threatened to accuse victim of adultery to force payment of a bill).

<sup>134</sup> *People v. Beggs*, 178 Cal. 79, 84, 172 Pac. 152 (1918). (on threat of prosecution, employer collected \$2,000 from employee who took \$50 worth of goods).

<sup>135</sup> "It is the means employed which the law denounces and though the purpose may be to collect a just indebtedness arising from and created by the criminal act for which the threat is to prosecute the wrongdoer, it is nevertheless within the statutory inhibition." *People v. Beggs*, *supra*, at 84.

<sup>136</sup> See Professor Schwartz' preliminary memorandum concerning compounding, at pp. 6-7.

<sup>137</sup> *Id.* at p. 10.



It is appropriate to consider the New York version of the affirmative defense, which is more circumscribed than the Proposed Official Draft version. The New York Penal Law provides an affirmative defense to prosecution for larceny by extortion "committed by instilling in the victim a fear that he or another person would be charged with a crime" where the alleged offender "*reasonably* believed the threatened charge to be true" and "his *sole* purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge."<sup>138</sup> Unlike the Proposed Official Draft, the New York law makes no specific provision for undefined threats to defame, or take or invoke official action unrelated to a criminal charge. It also requires explicitly that the defendant reasonably believe the threatened charge to be true. While the Proposed Official Draft requires that restitution be honestly claimed, it has no requirement that a crime charged be honestly or reasonably believed to be true. A provision something like the New York provision has the advantage of being more explicitly limited to the situation which, according to the Proposed Official Draft commentary, induced the inclusion of the affirmative defense.

*Threats designed to obtain official action.* California Penal Code Section 518 reaches beyond the obtaining of property by threat, to include "obtaining of an official act of a public officer, induced by a wrongful use of force or fear . . ." Such conduct is properly treated, not as a subdivision of theft, but a species of bribery and corrupt influences to official conduct, by the Proposed Official Draft.<sup>139</sup>

### **Property Lost, Mislaid or Delivered by Mistake**

*Proposed Official Draft Section 223.5* provides:

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

<sup>138</sup> N.Y. Pen. Law Sec. 155.15(2). (Emphasis added.)

<sup>139</sup> P.O.D. Sec. 240.2.



With respect to lost property, this section restates existing California law. There are, however, no California theft statutes or cases which explicitly deal with property delivered under a mistake.

*Lost and mislaid property. Penal Code Section 485* provides:

One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of theft.

This provision, substantially unchanged from the 1872 Penal Code, was intended to plug a hole in the common law, which subjected the finder of "mislaid" property to larceny penalties, but left unpunished the finder of "lost" property. Unlike the Penal Code, the Proposed Official Draft provision explicitly reaches both lost and mislaid property under the same provision. However, under common law precedents, in California the appropriator of "mislaid" property would be guilty of larceny.

The provisions of *Penal Code Section 485* might be interpreted to impose liability on the negligent finder, since it imposes penalties on the finder who fails to take reasonable measures before appropriating the property.<sup>140</sup> The explicit requirement of a "purpose to deprive the owner" in the Proposed Official Draft is to eliminate theft punishment for the finder who "stupidly or carelessly" failed to take steps to locate the true owner.<sup>141</sup> This is consistent with the scheme of the Proposed Official Draft to limit theft penalties to purposeful rather than negligent conduct.

*Property delivered by mistake.* The Proposed Official Draft equates property "delivered under a mistake as to the nature or amount of the property or the identity of the recipient" with lost property—*i.e.*, requiring efforts to restore the property to the owner. The Penal Code has no equivalent provision, nor are there California cases which determine whether theft penalties are appropriate in this situation.

<sup>140</sup> There are no cases.

<sup>141</sup> *Tent. Draft No. 2*, comment at p. 84.

The Proposed Official Draft is designed to reach such situations as the actor who accepts a \$10 bill in change, knowing that the person who gave it to him thought he was handing over a \$1 bill. There is some question whether existing theft penalties cover the situation. The actor has obtained the property without trespass or false pretense,<sup>142</sup> nor has he been "entrusted" with the property as that term is used in the embezzlement statute.<sup>143</sup>

The limitation in the Proposed Official Draft to mistakes as to the nature or amount of the property or the identity of the recipient is to avoid criminal punishment of such "sharp trading" as the purchase of property at a bargain price because the seller does not appreciate the value of what he is selling.<sup>143a</sup>

Once a decision has been made to require the finder of lost property to restore on penalty of theft, it seems appropriate to impose the same obligation on those who have been given property by mistake. The substance of the Proposed Official Draft provision has been accepted in New York.<sup>144</sup>

### Receiving Stolen Property

The major issues concerning the crime of receiving stolen property are those of *mens rea* and, particularly in the case of dealers in goods, presumptions.

*Proposed Official Proposed Draft Section 223.6* provides that a person is guilty of theft if he "receives, retains or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen . . . ." <sup>145</sup> By contrast, the general receiving provision in California, *Penal Code Section 496(1)*, requires knowledge that the property has been stolen. The Proposed Official Draft provision can be seen as a compromise between an objective standard, such as exists in those states where it is sufficient that the actor had reason to believe the property stolen, and a subjective standard of actual knowl-

<sup>142</sup> Cf. *Regina v. Middleton*, Lr. 2 C.C.R. 38 (1873) (larceny conviction of depositor who, on withdrawal, accepted overpayment from bank teller).

<sup>143</sup> See *Tent. Draft No. 2*, comment at p. 85.

<sup>143a</sup> *Id.* at 85-86.

<sup>144</sup> *N.Y. Pen. Law Sec. 155.05*. Illinois, however, limited its provision to lost or mislaid property, *Ill. Crim. C. Sec. 16-2*. Wisconsin has no specific provision for lost property or property delivered by mistake.

<sup>145</sup> *Tent. Draft No. 2, Sec. 206(8)(1)* drew a distinction with reference to the *mens rea* required in the case of dealers and others. For those other than dealers, knowledge that the property was stolen was required; for dealers, it was sufficient that there be a belief that the property was probably stolen.

edge that it is stolen. Under both the Proposed Official Draft and California standards, a subjective awareness is required and the actor is not punished for carelessness.<sup>146</sup>

More significant than the general *mens rea* requirement are the presumptions of knowledge provided in the case of dealers. The Proposed Official Draft presumptions of knowledge apply in the case of all dealers, defined to mean any person "in the business of buying or selling goods."<sup>147</sup> The presumptions of knowledge in *Penal Code Section 496*, on the other hand, are limited to "second-hand dealers."<sup>148</sup> Moreover, the Penal Code presumption of knowledge is defined generally, to arise in situations where the property is received under circumstances which should cause the dealer to make reasonable inquiry as to the legal right of the seller to dispose of the property, and he fails to make such inquiry.<sup>149</sup> The Proposed Official Draft raises its presumptions in specific circumstances. One of those is a situation which would probably qualify as a suspicious circumstance under California law—"being a dealer in property of the sort acquired, [where the dealer] acquires it for a consideration which he knows is far below its reasonable value."<sup>150</sup> The other two presumptions arise from the dealer's past or present conduct—that he "is found in possession or control of property stolen from two or more persons on separate occasions"<sup>151</sup> or that he "has received stolen property in

<sup>146</sup> The "reason to believe" standard may not be much different in practice from a requirement of subjective knowledge, since proof of reason to believe will, in most cases, authorize an inference of knowledge or belief by the jury. See *Tent. Draft No. 2*, comment at p. 96.

<sup>147</sup> *P.O.D. Sec. 223.6(2)*.

<sup>148</sup> This is defined in *Pen. C. Sec. 496(2)* to persons "whose principal business is dealing in or collecting used or secondhand merchandise or personal property."

<sup>149</sup> Among factors held relevant by California cases are the fact that the property was bought from a person of questionable character, *People v. Boyden*, 116 Cal. App. 2d 278, 288, 253 P.2d 733 (1963); that it was bought from an ex-convict, *People v. Moore*, 137 Cal. App. 130, 132, 30 P.2d 79 (1934); that the defendant had bought other property from the same seller, knowing that property to have been stolen *People v. Rossi*, 15 Cal. App.2d 180, 184, 59 P.2d 206 (1936); and that the dealer bought the property at what he knew to be a very low price, *People v. Cale*, 74 Cal. App. 2d 689, 169 P.2d 649 (1946). Only one case, however, deals explicitly with the statutory presumption. *People v. Seerman*, 43 Cal. App. 2d 506, 509, 111 P.2d 457 (1941). The dealer bought a watch from a 14 year old boy, after having asked him to get a letter from his mother saying he was allowed to sell the watch. On the basis of a forged letter, without further inquiry, the dealer bought the watch. The court upheld a finding of knowledge based upon the presumption. Ironically, the finding was upheld alternatively under the provision, now repealed, creating a presumption of knowledge when property is received from a minor. See note 150, *infra*.

<sup>150</sup> *P.O.D. Sec. 223.6(2)(c)*. *Pen. C. Sec. 496(3)* provided, prior to its amendment in 1963, that a presumption of knowledge arises if stolen property was received from a minor under eighteen, unless sold by the minor at a fixed place of business. In *People v. Stevenson*, 53 Cal. 2d 794, 26 Cal. Rptr. 297, 376 P.2d 297 (1962), this provision was held to violate due process, since the presumption arose in situations where such a presumption would not be rational (such as a child selling property, like a bicycle, which would normally belong to a child).

<sup>151</sup> *P.O.D. Sec. 223.6(2)(a)*.



another transaction within the year preceding the transaction charged.”<sup>152</sup> There are no equivalent provisions in California law.

Another difference between the Proposed Official Draft and California law is in the matter of rebutting presumptions of knowledge. Since the crime requires knowledge that the property was stolen, absent specific provision, the defendant dealer could attempt to convince the jury that, although he acted unreasonably, he was in fact ignorant of the fact that the property was stolen. However, once the presumption arises, *Penal Code Section 496(3)* puts the burden of proof on the defendant that he has made a reasonable inquiry to ascertain the legal right of the person from whom he acquired the property. No similar provision appears in the Proposed Official Draft although, it should be noted, unlike California law, belief that the property “has probably been stolen” will suffice for conviction. In addition, the Penal Code has two special “receiving” offenses, which explicitly adopt a negligence criterion for liability. *Penal Code Section 496a* makes it a crime for a secondhand or junk dealer to buy certain kinds of property that he knows, or reasonably should know, are ordinarily used by a railroad or utility company, without using due diligence to ascertain that the seller has a legal right to sell the property.<sup>153</sup> *Penal Code Section 496b* applies a similar due diligence standard to secondhand book dealers who buy books bearing the marks of ownership of a public or institutional library.<sup>154</sup> The draft represents a combination of features of the Proposed Official Draft and the Penal Code. The

<sup>152</sup> *P.O.D. Sec. 223.6(2)(b)*.

<sup>153</sup> (a) Every person who, being a dealer in or collector of junk, metals or secondhand materials, or the agent, employee, or representative of such dealer or collector, buys or receives any wire, cable, copper, lead, solder, mercury, iron or brass which he knows or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, gas, water or electric light company or county, city, city and county or other political subdivision of this state engaged in furnishing public utility service without using due diligence to ascertain that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving such property. . .

*Sec. 496a(b)* requires obtaining identification of the seller, and records-keeping pursuant to *Bus. & Prof. C. Sec. 21607*.

<sup>154</sup> Every person who, being a dealer in or collector of second-hand or other literary material, or the agent, employee or representative of such dealer, or collector, buys or receives any book, manuscript, map, chart, or other work of literature, belonging to, and bearing any mark or indicia of ownership by a public or incorporated library, college or university without ascertaining by diligent inquiry that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving such property in the first degree if such property be of the value of more than fifty dollars, and is punishable by imprisonment . . . ; and is guilty of criminally receiving such property in the second degree if such property be of the value of fifty dollars or under. . . .



presumption of knowledge applies to all dealers, and not simply dealers in secondhand goods. Belief that the property probably has been stolen will suffice to sustain conviction, but the statutory presumption of knowledge or belief can be overcome if the dealer convinces the trier of fact that he honestly lacked such knowledge or belief. Receiving stolen property is so serious an offense that negligence alone should not be the avowed basis of liability. Like the existing Penal Code, however, the prosecutor will be allowed to make a *prima facie* case against the dealer by showing negligence—where the dealer received under circumstances as should cause reasonable inquiry without making the inquiry. The Proposed Official Draft presumptions which arise if the dealer possesses other stolen property or has received stolen property in another transaction are rejected. There is some doubt whether either presumption is sufficiently rational to withstand due process attack.<sup>155</sup> In addition, these provisions might unnecessarily open the door to proof of the instant charge by proof of other past or present misconduct. Finally, there are no provisions for records-keeping like those in *Penal Code Section 496a(b)*; such provisions belong in statutes regulating secondhand dealers or pawnshops, and not in the general criminal code.<sup>156</sup> As drafted, the section is similar (although not identical) to the New York Penal Code.<sup>157</sup> In addition, the draft retains a special affirmative defense of the Proposed Official Draft that the defendant has received the property with intent to restore it to the owner. While California law now has no such specific provision, it is doubtful that the present statute would be construed to reach such situations as where an insurance company pays a reward for return of stolen property “no questions asked.”<sup>158</sup>

<sup>155</sup> See *People v. Stevenson*, *infra* note 150. A more rigorous presumption in *Tent. Draft No. 2* arose whenever the defendant had been convicted of any form of theft within the preceding three years. *Tent. Draft No. 2 Sec. 206.8(4)(c)*. The presumptions were softened on the ground that the rational basis for the presumption in *Tent. Draft No. 2* was so tenuous as to raise constitutional questions. P.O.D. comment at p. 171.

<sup>156</sup> *Tent. Draft No. 2* made provision for notification to the police by dealers acquiring from children under 16, or in other suspicious circumstances. *Tent. Draft No. 2 Sec. 206.8(b)*. This was deleted on the ground that such a provision belonged in a regulatory statute outside the Penal Code. P.O.D. comment at p. 171.

<sup>157</sup> *N.Y. Pen. Law Sec. 165.55(2)* provides: “A pawnbroker or person in the business of buying, selling or otherwise dealing in property who possesses stolen property is presumed to know that such property was stolen if he obtained it without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess it.”

<sup>158</sup> *Tent. Draft No. 2*, comment at p. 97. New York accomplishes the same purpose with a requirement that the receiver intend to benefit himself or a person other than the owner. *N.Y. Pen. Law Sec. 165.50*.

## Theft of Services

*Utility Services.* *Proposed Official Draft Section 223.7*, covering theft of labor and services, states a general principle covered with more particularity in the Penal Code. It would replace the separate misdemeanors of theft of electricity,<sup>159</sup> theft of gas,<sup>160</sup> and theft of water.<sup>161</sup> Moreover, without specific special provision, the preparatory conduct specifically treated by those provisions<sup>162</sup> would probably be punishable as attempts.

The more elaborate provisions of *Penal Code Section 502.7*, dealing with obtaining of telephone or telegraph services by fraud, go considerably beyond the Proposed Official Draft. *Section 502.7(a)* specifies in detail means of avoiding a telephone charge.<sup>163</sup> Without this specificity, it is likely that all of the specific listed ways of evading payment for telephone service would fall under the general provision of *Proposed Official Draft Section 223.7* as a "means to avoid payment for the service." *Section 502.7(b)* punishes making, selling, possessing, etc. devices intended to be used to avoid telephone or telegraph toll charges.<sup>164</sup> Again, it would appear that many of the acts made criminal would be punishable according to usual theories of attempts or accessorial liability. On the other

<sup>159</sup> *Pen. C. Sec. 499a.*

<sup>160</sup> *Pen. C. Sec. 498.*

<sup>161</sup> *Pen. C. Sec. 499.*

<sup>162</sup> *I.e.*, making a connection to bypass a gas meter or altering or obstructing the meter, *Pen. C. Sec. 498*; making a connection to conduct water to evade payment, *Pen. C. Sec. 499*; making a connection to bypass an electric meter or altering or obstructing the meter, *Pen. C. Sec. 499a.*

<sup>163</sup> (a) A person who knowingly, willfully and with intent to defraud a person providing telephone or telegraph service, avoids or attempts to avoid, or aids, abets or causes another to avoid the lawful charge, in whole or in part, for telephone or telegraph service by any of the following means is guilty of a misdemeanor:

(1) By charging such service to an existing telephone number or credit card number without the authority of the subscriber thereto or the lawful holder thereof; or

(2) By charging such service to a nonexistent telephone number, or to a number associated with telephone service which is suspended or terminated, or to a revoked or canceled (as distinguished from expired) credit card number, notice of suspension, termination, revocation or cancellation of such telephone number or credit card having been given to the subscriber thereof or the holder thereof; or

(3) By use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information; or

(4) By rearranging, tampering or making connection with telephone or telegraph facilities or equipment whether physically, electrically, inductively or otherwise, or by using telephone or telegraph services with knowledge or reason to believe that such arrangement, tampering or connection existed at the time of such use; or

(5) By using any other deception, false pretense, trick, scheme, device or means.

<sup>164</sup> (b) A person who (1) makes, possesses, sells, gives or otherwise transfers to another, or offers or advertises an instrument, apparatus or device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message; or (2) sells, gives or otherwise transfers to another or offers or advertises plans or instructions for making or assembling an instrument, apparatus or device described in paragraph (1) of this subdivision with knowledge or reason to believe that they may be used to make or assemble such instrument, apparatus or device, is guilty of a misdemeanor.

hand, such acts as the mere possession with knowledge might not be otherwise criminal without this specific provision. If a similar provision is to be retained in the draft Penal Code, it ought to be considered for inclusion along with the "forgery and fraudulent practices" covered by *Proposed Official Draft Article 224*. The questions for decision are whether to retain this provision and, if it is to be retained, whether it should be placed in the general theft section.

*Sections 502.7(c) and 502.7(d)* state special principles of territorial applicability and venue.<sup>165</sup> To the extent that the problems presented are not solved by general venue provisions, and general territorial jurisdiction provisions,<sup>166</sup> this subdivision ought to be rejected.

*Section 502.7(e)* is a special provision for grading of the offense of fraudulently obtaining telephone service. Generally, it provides felony treatment if \$200 worth of telephone service is fraudulently obtained during any 12 month period within the preceding 36 months. Under the general aggregation provisions of the Proposed Official Draft, amounts could be aggregated to the extent that they were "thefts committed pursuant to one scheme or course of conduct." Providing a special aggregation rule for fraudulently obtained telephone service probably can be justified only as special interest legislation. *Section 502.7(e)* also provides for felony punishment if the defendant has previously been convicted of the offense, paralleling the Penal Code's treatment of petty theft with a prior petty theft conviction.<sup>167</sup> Finally, *Section 502.7(f)* provides for destruction as contraband of the devices used to avoid telephone charges described in *Section 502.7(b)*. Such a provision, if it belongs anywhere, should be considered along with general procedural provisions for destruction of contraband.

In short, while the draft does not reflect the special provisions of *Sections 502.7(b)–502.7(e)*, some of those

<sup>165</sup> (c) Subdivision (a) of this section shall apply when the telephone or telegraph communication involved either originates or terminates, or both originates and terminates in this state, or when the charges for service would have been billable, in normal course, by a person providing telephone or telegraph service in this state, but for the fact that the charge for service was avoided, or attempted to be avoided, by one or more of the means set forth in subdivision (a) of this section.

(d) Jurisdiction of an offense under this section is in the jurisdictional territory where the telephone call or telegram involved in the offense originates or where it terminates, or the jurisdictional territory to which the bill for service is sent or would have been sent but for the fact that the service was obtained or attempted to be obtained by one or more of the means set forth in subdivision (a) of this section.

<sup>166</sup> See *P.O.D. Sec. 1.03*.

<sup>167</sup> See the discussion under grading of theft offenses.



provisions might be flagged for consideration in other places in the substantive and procedural penal codes.

*Hotel, Restaurant and Other Personal Services.* Under *Penal Code Section 537*, it is a misdemeanor to obtain food or accommodations without paying and with intent to defraud. The statute further provides that proof that a person left the premises without paying is prima facie evidence he obtained the services with intent to defraud. *Proposed Official Draft Section 223.7* covers such conduct as theft, and provides for a presumption that the service was obtained by deception as to intent to pay in all circumstances where "compensation for service is ordinarily paid immediately upon the rendering of such service," which would extend the presumption of the innkeeper statute to barbers and the like.

The special provision of *Proposed Official Draft Section 223.7(2)*, including as theft the diversion of services to which the actor is not entitled, has no statutory counterpart in California law. Arguably, this would be theft under the general definition of property subject to theft.<sup>168</sup> If it is not theft, it should be.

*Fraudulent Hire.* *Tentative Draft No. 2* had a specific provision for fraudulent hire, which provided as follows:

A person who, without consent of the owner or by deception or intimidation, secures or exercises control over movable property of another which is held for hire, with the purpose to evade payment of the hire, commits theft with respect to the amount of such hire. Purpose to evade payment shall be presumed from refusal to pay the hire or absconding without payment or offer to pay.<sup>169</sup>

This provision was intended to be consolidated into *Proposed Official Draft Section 223.7* without change in substance.<sup>170</sup> Thus, as appropriate comment would make clear, with reference to grading, it is the amount of the rental and not the value of the chattel which governs where the renter is cheated out of his rental fee, and the presumption of deception as to intent to pay would apply to rental situations where appropriate.

<sup>168</sup> See discussion under "definitions," *supra*.

<sup>169</sup> *Tent. Draft No. 2, Sec. 206.6(3)*.

<sup>170</sup> *P.O.D. comment at p. 172*.



The existing provisions of California law dealing with rental of personal property<sup>171</sup> create Draconian presumptions of theft of the property itself when it is not promptly returned. *Penal Code Sections 484(b)–484(d)*, dealing with lease or rental of personal property generally, raises a presumption of intent to commit theft by fraud if the property is not returned to the owner within 20 days of written demand for its return following expiration of the rental. *Vehicle Code Section 10855* provides for presumption of embezzlement of a rented vehicle if not returned within five days after expiration of the rental. Appropriate comment to a provision like the Proposed Official Draft would indicate it intended to raise a presumption, like the specific provision of *Tentative Draft No. 2*, of intent to evade payment of the rental fee if an actor refused to pay the fee or absconded without paying it. It is questionable whether a presumption of intent to steal the property itself is appropriate where the renter has failed to return the property on time. In addition, *Penal Code Section 484(b)* provides for a presumption of theft if the renter procures the rental on false identification. No such presumption is reflected in the Proposed Official Draft.

### **Theft by Failure to Make Required Disposition**

Of all of the provisions of the basic theft statute in the Proposed Official Draft, the most difficult analytical problem is presented by *Section 223.8*. This is an attempt to solve the problem of *Commonwealth v. Mitchneck*.<sup>172</sup> There, a theft prosecution failed, where an employer withheld wages under an agreement to pay employee grocery bills which he fraudulently failed to pay. The element missing from the standard theft sections was money “belonging” to the employees which was converted. Without a provision like *Section 223.8*, in situations like this theft liability turns on close questions of property law. If, for example, in *Mitchneck* the employees had drawn their pay and handed money back to the defendant to pay grocery bills, the employer’s diversion would be embezzlement. There is considerable force to the argument that in many transactions where money has lost its identity, the parties understand funds

<sup>171</sup> *Pen. C. Secs. 537b and 537c*, dealing with livery stables, ought to be disregarded as obsolete.

<sup>172</sup> 130 Pa. Super. 433, 198 Atl. 463 (1938).

to be earmarked for certain purposes, and diversions ought to be treated as theft.<sup>173</sup> The trick is to draft a provision which reaches transactions like that in *Mitch-neck*, and yet avoids "putting the force of the criminal law behind transactions which are in fact credit transactions."<sup>174</sup>

As drafted in *Tentative Draft No. 2*, this section provided:

**Section 206.4. Theft by Failure to Make Required  
Disposition of Funds Received**

(1) *In General.* A person who obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property in equivalent amount, commits theft if he deals with the property obtained as his own and fails to make the required payment or disposition, unless the actor proves that his obligation in the transaction was limited to a promise or other duty to be performed in the future without any present duty to reserve property for such performance. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.

(2) *Presumptions.* A person within the categories listed below shall be presumed to have knowledge of any legal obligation relevant under subsection (1), and shall in addition be presumed to have dealt with the property as his own if he fails to make a required payment or disposition, or to render a required accounting, or if he falsifies a relevant account, or if an audit reveals a shortage:

(a) an officer or employee of the government or of a credit institution; or

(b) a fiduciary; or

(c) a person engaged in a business subject to a statutory obligation to reserve property received or equivalent amounts of his own property for specified purposes.

<sup>173</sup> See *Tent. Draft No. 1*, comment at p. 68.

<sup>174</sup> See *Tent. Draft No. 2*, comment at p. 81.

At the 1955 meeting of the American Law Institute, this section was recommitted "for further consideration of questions of presumption and burden of proof," and "for consideration of proposal to limit liability of the private fiduciary to cases where demand has been made upon him."<sup>175</sup> Interestingly, there is some question whether the defendant in *Mitchneck* could be prosecuted successfully under the Model Penal Code as drafted or redrafted, since there is a requirement that the defendant "obtain" property. In *Mitchneck*, the defendant had simply withheld wages which he subsequently failed to apply as agreed. Addition of the phrase "or retains" after the word "obtains" would obviate this difficulty.

One result of the redraft was to eliminate the specific affirmative defense that "the obligation in the transaction was limited to a promise or other duty to be performed in the future without any present duty to reserve property for such performance." Since the purpose of the revision was to circumscribe the section and add to the prosecution's burden of proof, the elimination of the affirmative defense probably signals the belief that the prosecutor will have to prove that the defendant's obligation was *not* so limited in order to prove that the property was received under a known obligation "to make specified payment or other disposition." This interpretation is fortified by the addition of a requirement that the actor's own property, if the source of payment, was required "to be reserved." With reference to the specific presumptions, the presumptions against private fiduciaries were eliminated, as were presumptions based on failure to make a required payment or disposition in the absence of a lawful demand.<sup>176</sup>

One measure of the legitimate concern whether the provision, as drafted, appropriately draws the line between criminal misappropriation and non-criminal breach of contract is the fact that the New York, Illinois and Wisconsin criminal codes have not adopted a similar provision.

In California, there is a long history of provisions similar in purpose to *Proposed Official Draft Section 223.8*, although each of these provisions has been limited to a particular kind of transaction. Moreover, many of

<sup>175</sup> *Tent. Draft No. 4*, p. 63.

<sup>176</sup> *P.O.D.*, comment at p. 173.



those provisions have been specifically considered in the context of the California Constitutional provision outlawing imprisonment for debt.<sup>177</sup> An early attempt was a 1919 amendment to *Penal Code Section 506*<sup>177a</sup> defining embezzlement to include "any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it." In *People v. Holder*,<sup>178</sup> as applied to contracts which specified that title to the received funds vested in the contractor, this provision was held to be an unconstitutional imprisonment for debt. The court reasoned that so long as title vested in the contractor, it constituted imprisonment for debt to apply criminal penalties to his failure to account. If, on the other hand, the section was construed so that in every such transaction title to the funds did not vest in the contractor,<sup>179</sup> it would be an unconstitutional deprivation of the parties' right to agree that title to money received should vest in the contractor. As a result, *Penal Code Section 506* has been limited to those cases where the contractor agreed that title to received funds is not to vest in him.<sup>180</sup> The result of the *Holder* decision thus was to abort the attempt to disassociate the embezzlement question from the question whether the actor had title to the retained funds.

Other specific provisions, which have not been coupled with the Penal Code's theft provisions, have, however, been upheld. *Labor Code Section 216* makes it a misdemeanor for an employer wilfully to refuse to pay wages due to an employee when the employer has the ability to pay. This was upheld against attack as imprisonment for debt on the ground that it reached only "wilful" refusal, and thus fell within the exception of fraud or wilful injury to person or property.<sup>181</sup> On the same theory, *Unemployment and Insurance Code Section 2110* (punishing as a misdemeanor an employer's wilful failure to pay employee contributions to the Department of

<sup>177</sup> Art. 1, Sec. 15.

<sup>177a</sup> Stats. 1919, ch. 518, p. 1090, sec. 1.

<sup>178</sup> 53 Cal. App. 45, 199 Pac 832 (1921).

<sup>179</sup> The section further provides "the payment of laborers and material men for work performed or material furnished in the performance of any contract is hereby declared to be the use and purpose to which the contract price of such contract, or any part thereof, received by the contractor shall be applied."

<sup>180</sup> *People v. Clemmons*, 136 Cal. App. 2d 529, 288 P. 2d 1021 (1955). Compare *People v. Pierce*, 110 Cal. App. 2d 598, 243 P. 2d 585 (1952) (embezzlement conviction against promoters of a plasterboard manufacturing business sustained, where defendants obtained cash bonds from prospective distributors and, facing financial difficulties, used the money for plant facilities).

<sup>181</sup> *In re Trombley*, 31 Cal. 2d 801, 193 P. 2d 734 (1948).



Employment) has been upheld.<sup>182</sup> Also upheld were the provisions of *Labor Code Section 227* (making it a misdemeanor for an employer wilfully to fail to make payment to an employee's health fund as required by a collective bargaining agreement).<sup>183</sup> The requirement that the actor act "purposely" in *Proposed Official Draft Section 223.8* ought to save such a section from constitutional attack on the same theory.

Among other provisions which punish failure to account are the following: *Penal Code Section 504b* punishes as embezzlement the wilful failure of a debtor to pay the secured creditor after sale of property covered by a security agreement. *Penal Code Section 506b* punishes as a felony misappropriation of the buyer's installment payments by the seller of real property under a sales contract. Under *Penal Code Section 424(7)*, a public officer commits a felony if he "wilfully omits or refuses to pay over to any officer or person authorized by law to receive the same any money received by him under any duty imposed by law so to pay over the same." And, completing the circle by attempting once more to deal with the defaulting building contractor, is a 1965 addition to the Penal Code. *Section 484b* makes it an offense to fail to apply money received for the purpose of paying for services, labor, materials or equipment, and to wrongfully divert the funds to a use other than that for which received. (Unlike the embezzlement statute, the line between felony and misdemeanor under *Section 484b* is drawn at \$10,000.)<sup>184</sup> At this stage, no attempt has been made to make a comprehensive search for statutes imposing criminal liability on the principle of failure to account, and there may be more.

Given the number of existing California statutes governing failure to make required disposition of funds, a rejection of *Proposed Official Draft Section 223.8* would result in a significant curtailment of criminal liability. Given the other alternatives of attempting to draft a statute which exhaustively compiles the situations where failure to make required disposition is criminal, or adopting a generalized provision similar to the *Proposed Official Draft*, the latter seems the better course. One method of

<sup>182</sup> *People v. Neal C. Oester, Inc.*, 154 Cal. App. 2d Supp. 883, 316 P. 2d 784 (1957); *People v. Dennis*, 253 Cal. App. 2d Supp. 1075, 60 Cal. Rptr. 925 (1967).

<sup>183</sup> *People v. Alves*, 155 Cal. App. 2d Supp. 870, 320 P. 2d 623 (1957).

<sup>184</sup> The statute was sponsored by the California Savings and Loan League. C.E.B., Review of Selected 1965 Code Legislation 179.

attempting to further circumscribe that provision would be to eliminate the presumptions against public officers and officers of financial institutions.

### Unauthorized Use of Vehicles

The problem of taking of automobiles and other vehicles is handled in a needlessly complex and confusing way in California. There are three basic, overlapping statutes. *Penal Code Section 499b*, the misdemeanor joyriding statute, applies to the taking of "any automobile, bicycle, motorcycle or other vehicle or motorboat or vessel for the purpose of using or operating the same . . . without the permission of the owner."<sup>185</sup> It requires proof that the defendant took the vehicle for the purpose of using it, but does not require proof of intent to deprive the owner of use or possession.<sup>186</sup> *Vehicle Code Section 10851* punishes as a felony taking a vehicle without the owner's consent with intent to deprive the owner either temporarily or permanently of either title or possession. Unlike the joyriding statute, it does not require taking for purposes of use by the taker, but does require specific intent to deprive the owner of possession or title.<sup>187</sup> The third statute is *Penal Code Section 487*, the basic grand theft statute, which requires a specific intent at the time of taking to deprive the owner of possession permanently, but does not require that the taking be for the purpose of use by the taker.<sup>188</sup>

The most confusing situation is that of the temporary taking of a vehicle, where the misdemeanor joyriding statute and the Vehicle Code felony temporary taking statute collide. Since the provisions of *Penal Code Section 499b* require a purpose of use of the vehicle by the defendant, and no such requirement appears in the Vehicle Code provision, it is possible to violate the felony provision by a temporary taking which does not violate the misdemeanor. Accordingly, misdemeanor joyriding is not a necessarily included offense in the Vehicle Code provision.<sup>189</sup> However, it is difficult to conceive a situation where violation of the misdemeanor joyriding provision

<sup>185</sup> *Pen. C. Sec. 499d* provides felony punishment for aircraft joyriding.

<sup>186</sup> *People v. Orona*, 72 Cal. App. 2d 478, 164 P. 2d 769 (1946); *People v. Neal*, 40 Cal. App. 2d 115, 104 P. 2d 555 (1940).

<sup>187</sup> *People v. Thomas*, 53 Cal. 2d 121, 373 P. 2d 97, 23 Cal. Rptr. 161 (1962); *People v. Orona*, *supra*; *People v. Neal*, *supra*. *Veh. C. Sec. 10851* provides misdemeanor penalties, in addition, for unlawful use or tampering with a vehicle by a bailee.

<sup>188</sup> *People v. Tellez*, 32 Cal. App. 2d 217, 89 P. 2d 451 (1939); *People v. Powell*, 236 Cal. App. 2d 884, 46 Cal. Rptr. 417 (1965).

<sup>189</sup> *People v. Thomas*, *supra* note 187.

would not constitute the felony.<sup>190</sup> The combination of the two statutes, in the typical joyriding case, either creates a subtle distinction concerning intent which no jury could administer, or gives the prosecutor total discretion to treat joyriding as felony or misdemeanor.<sup>191</sup>

A lesser practical problem, but one just as confusing, comes from the overlap between the grand theft statute and the misdemeanor joyriding statute. Again, because of the requirement of 499b of an intent to use for the taker's purpose, *Penal Code Section 499b* is not a lesser included offense within a charge of grand theft.<sup>192</sup> To compound the confusion, there is an overlap between the two felony provisions. The two offenses are sufficiently distinct that acquittal of one does not affect conviction of the other.<sup>193</sup> The Vehicle Code provision has been used to extend the statute of limitation for felony prosecution where the defendant had stolen an automobile four years before he was apprehended but had used it continuously during that time.<sup>194</sup> The court has not, however, permitted double punishment for both felonies.<sup>195</sup>

The Proposed Official Draft structure, by contrast, is refreshingly simple. Ordinarily theft penalties apply if the actor intends to "deprive" the owner of the vehicle, as that term is defined in *Proposed Official Draft Section 223.0(1)*—i.e., to withhold it permanently or for so extended a period as to appropriate a major portion of its value, or to dispose of it so as to make it unlikely that the owner will recover it. If the taking does not rise to such a deprivation, it is an unauthorized use under *Section 223.9*. Moreover, *Section 223.9* is broad enough to cover unauthorized use by a bailee,<sup>196</sup> as well as the typical joyriding case. The misdemeanor joyriding provision will, moreover, be a lesser included offense within a charge of theft.

The remaining policy questions concern coverage and grading. The draft statute follows the Model Penal Code

<sup>190</sup> "... the line of demarcation between sections 10851 and 499b is a subtle one at best and some confusion results in considering the question of a lesser included offense. It taxes one's credulity to deny that in the circumstances of the instant case, an offender could unlawfully take the vehicle of another for the purpose of using it or operating it without at the same time necessarily intending to deprive the owner of possession." 53 Cal. 2d at 129.

<sup>191</sup> *Id.* at 126.

<sup>192</sup> *People v. Powell*, *supra* note 188.

<sup>193</sup> *People v. Jeffries*, 47 Cal. App. 2d 801, 119 P. 2d 190 (1941).

<sup>194</sup> *People v. Cuevas*, 18 Cal. App. 2d 151, 63 P. 2d 311 (1936). The court reasoned that defendant violated the Vehicle Code felony section each time he used the car, even though the grand theft prosecution was barred.

<sup>195</sup> *People v. Kehoe*, 33 Cal. 2d 711, 204 P. 2d 321 (1949).

<sup>196</sup> *Veh. C. Sec. 10854*.



in rejecting felony treatment for airplane joyriding.<sup>197</sup> It also follows the Model Penal Code in eliminating bicycles from the joyriding provision: under the proposed code, misdemeanor offenses will be too serious for the bicycle joyrider, and a separate petty misdemeanor provision seems cumbersome. The draft follows existing California law in extending the Proposed Official Draft provision to sailboats. All "vessels" are now included under *Penal Code Section 499b*. Note that non-motor propelled vessels are not included within the class of vehicles whose theft is grand theft without reference to amount. While the Proposed Official Draft, *Sections 223.1(1) and 223.9*, uses identical lists for those vehicles whose theft is grand theft, and whose temporary taking is a misdemeanor, there is no need for the two lists to be the same. Grand theft treatment of the taking of motor-propelled vehicles is justified on the ground that these vehicles make the criminal more mobile, aiding in escape and the commission of other crimes. There may be a continuing "joyriding" problem deserving attention of the criminal law even where this factor is not crucial. Thus, the proposed statute covers non-motor propelled vessels under the "joyriding" provision, but not within the list of vehicles whose theft constitutes grand theft.

The Proposed Official Draft's affirmative defense, for reasonable belief that the owner would have consented, is explained as "necessary to exempt from criminal liability a good deal of informal borrowing of automobiles by members of the same household or friends of the owner."<sup>198</sup> The issue here would be whether to define the defense as requiring knowledge of lack of consent, or to introduce reasonable belief as to probable consent as an affirmative defense.

<sup>197</sup> Contrast *Pen. C. Sec. 499d*.

<sup>198</sup> P.O.D. comment at p. 174.













JOINT INTERIM COMMITTEE REPORT

1969

REPORT OF THE  
**JOINT INTERIM LEGISLATIVE  
UNEMPLOYMENT INSURANCE COMMITTEE**  
of the  
CALIFORNIA LEGISLATURE

December 1968



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THE UNIVERSITY OF CHICAGO  
PRESS

THE HISTORY OF  
THE UNITED STATES  
OF AMERICA  
FROM 1789 TO 1861  
BY  
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NEW YORK



CHICAGO

1861

## PREFACE

This report of the Joint Interim Committee on Unemployment Insurance has been prepared pursuant to Assembly Concurrent Resolution No. 129, California Legislature, 1967 General Session.

The major emphasis in the report is on what constitutes appropriate criteria for determining availability for work and reasonable efforts to seek work. The report is oriented toward development of recommended changes in certain statutory provisions of the Unemployment Insurance Code; it is not a critique of the administrative practices and procedures of the Department of Employment.

All the basic data on claimants were taken from official documents of the Department of Employment.

The methodology of the study, including the design and development of the statistical tables, were under the direction and supervision of the joint committee consultants, Robert C. Goshay and John K. Hislop.

Both the claimant data developed by the committee staff and that provided by the Department of Employment were programmed and tabulated at the Computer Center, University of California at Berkeley.





## FINDINGS

1. A substantial number of claimants become unemployed because they were discharged for misconduct in connection with their most recent employment, voluntarily left the last employment because of some domestic circumstance, or simply voluntarily quit without good cause. According to the department records as available, in a significant portion of such cases no inquiry is made as to whether the termination of employment was related to a circumstance, intent, or attitude indicating that the claimant is either unable to work or not available for work. There should be a statutory requirement that in all such cases the question of possible unavailability be specifically determined.

2. A claimant may draw benefits though he refuses suitable work or reasons which are found to be acceptable; that is, with good cause. While these may be acceptable reasons for refusing suitable work, they may also be of such a nature that the claimant is not able to work or unavailable for work. Again, according to the written record, there appear to be some instances in which the department does not make a determination as to whether the "good cause" reason poses an able and available issue. The Unemployment Insurance Code should be amended to require that this be done in all cases.

3. The Unemployment Insurance Code currently provides that where a claimant voluntarily leaves his last employment without good cause he is discharged for misconduct in connection with his most recent employment no benefits shall be paid until the claimant has earned wages in bona fide employment equal to five times his weekly benefit amount. Such a requirement is justified on the basis that it was his own voluntary act which resulted in his moving from employed status to unemployed status. The same logic applies in the case of a refusal of suitable work without good cause; it is the claimant's own voluntary act which prevents him from moving from unemployed status to employed status; therefore, the earnings requirement as a condition of receipt of benefits should be the same.

4. The current arrangements existing between the Department of Employment and a labor organization, where registration with it and compliance with its rules are deemed to satisfy the seek work requirements of the Unemployment Insurance Code, are informal in nature and pose serious control problems for the Department of Employment. Although arrangements of this type are justified as a general principle inasmuch as affected employers and a labor organization have entered into a contractual agreement relative to, among other things, the referral of union members to employment through the union hiring facility, it is desirable that the Unemployment Insurance Code be amended to require a written memorandum of understanding to establish such an arrangement. Further, the memorandum of understanding should provide for certain department prerogatives and certain labor organization obligations.

5. The analysis of claimant base period wage data reveals a significant proportion of the claimants had only marginal earnings coupled with extremely short employment duration. This finding indicates that such claimants' pursuit of employment opportunities in their "usual" occupation was relatively unsuccessful. A public policy declaration that such claimants should be directed to search for employment in additional occupations as well as their "usual" occupation is desirable.

6. The effective application of any set of administrative standards and procedures is possible only where a reasonable degree of homogeneity exists among the members of the class to whom the administrative standards and procedures are to be applied. The basic and most significant test of this homogeneity in the unemployment compensation system is the amount of base period earnings required to establish a valid claim for benefits. The current amount (\$720) does not bear a rational relationship to any other aspect of the system. Public policy considerations suggest that criteria be set forth in the Unemployment Insurance Code for the determination of the basic monetary eligibility requirement.

7. In the 1959 General Session the California Legislature provided for the payment of unemployment insurance benefits to an eligible claimant although he was enrolled in a training course of instruction. This provision subsequently was amended in an attempt to limit the circumstances under which benefits would be paid during retraining. This provision presented the difficulty of determining when the ability of a claimant to compete for jobs in the labor market was impaired by advancement in technological improvements and the widespread effects of automation and relocation in our economy in relation to Section 1269 of the Unemployment Insurance Code which provides:

"(a) Reasonable employment opportunities for which the unemployed individual is fitted by training and experience do not exist or have substantially diminished in the labor market area in this State in which he is claiming benefits."

This difficulty led to widely varying interpretations of the statutory provisions. The state program currently is insignificant in terms of the number of people to whom it is applicable.

Apart from this difficulty, training and retraining of the unemployed has been largely preempted by the federal government. The retraining benefits in the unemployment insurance program in California antedated the federal government programs. In view of the dominance of the federal programs, and the administrative problems in determining the technologically related causes of unemployment as required by the California statute and the concurrent diversion of manpower resources of the Department of Employment, continuance of the program cannot be justified.

## RECOMMENDATIONS

1. In all cases where a claimant is disqualified because of a discharge or misconduct in connection with his most recent employment, a finding for domestic reasons, or is found to have voluntarily left his last employment, a determination must be made as to whether there is a suitable and available issue. If there is such an issue and it is disqualifying, a rebuttable presumption should be established that such disqualifying issue continues in existence. Upon the subsequent filing of a claim for benefits, the department must make a specific finding that the disqualifying issue is no longer in existence as a condition precedent to payment of benefits.
2. Where a claimant refuses suitable work and the refusal is found to be with good cause, the department must make a determination as to whether the good cause raises an issue and, if so, whether it is disqualifying.
3. Where a claimant is disqualified because of a refusal of suitable work without good cause, no benefits shall be paid until the claimant has earned wages in bona fide employment equal to five times his weekly benefit amount.
4. The search for suitable work provision of the Unemployment Insurance Code shall not be satisfied by the requirement that a claimant register for employment with a designated organization unless a written memorandum of understanding is in effect between the Department of Employment and such organization.  
The memorandum of understanding shall specify:
  - a. The extent to which the search for suitable work requirement can be satisfied through such organization.
  - b. The organization shall notify the Department of Employment in all cases where an individual in claimant status and registered with the organization refuses a referral to employment.
  - c. The organization shall notify the Department of Employment in all cases where an individual in claimant status and registered with the organization loses his position on the referral or employment roster.
  - d. The Department of Employment prerogative to assign search for suitable work requirements independent of the memorandum of understanding based on claimants' work experience and current employment conditions.
5. Where there is a finding by the director that a claimant's total base period wages and the distribution of such wages indicate substantially below normal employment experience, such claimant shall be directed to seek employment in occupations other than his "usual" occupation as well as his "usual" occupation.

6. The Legislature should give full and careful consideration to the appropriateness of the following criteria in the establishment of the minimum amount of base period wages required to establish a valid claim \* for unemployment compensation benefits:

- a. The minimum wage as established by federal statute.
- b. A workweek of 32 hours.
- c. Employment for 26 weeks during the base period.

7. Article 1.5, "Retraining Benefits," of the Unemployment Insurance Code should be repealed.

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\* The committee is cognizant of the fact that it was not specifically directed to consider whether any modifications should be made in the existing monetary eligibility requirement, per se. Recommendation No. 6 is made on the basis that neither the current provisions of the Unemployment Insurance Code as they relate to "seek work" and able and available issues nor the changes as recommended by the committee in this report can function effectively with regard to those claimants who cannot meet the minimum criteria set forth in this recommendation.



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## SECTION I

### INTRODUCTION

ACR 129 of the 1967 session of the California Legislature created the Joint Interim Legislative Unemployment Insurance Committee. The committee was charged to study the standards and procedures appropriate for determining what constitutes an unemployed individual's availability for work and reasonable efforts to secure employment, two of several criteria which must be fulfilled if a worker is to be eligible for unemployment insurance benefits. Included in the charge to the committee is study of the nature and effectiveness of seek-work plans assigned by the Department of Employment to unemployed, and study of certain provisions in the law which allow the receipt of benefits by those in "retraining" status. Section I of the study report treats "availability" for work and "reasonable efforts to seek work" matters (1) in terms of the types of information required by the Department of Employment or any other administering agency and (2) in terms of the types of tests or screens which the claimant is required to pass in order. Section II presents empirical data which develop the nature and extent of availability problems. Sections III and IV treat the B-1 seek-work plan and retraining benefit provisions of the Unemployment Insurance Code, respectively.

All of the charges in ACR 129 have not been studied. A number of these involved information which, upon study, proved to be of marginal value, or, as was more often the case, involved retrieval costs far greater than could be justified. Certain priorities were established as is evident from a comparison of the table of contents and ACR 129. It is not believed that further research into the charges in ACR 129 would bring fruitful legislative results, or substantial change in our recommendations.

### THE PROBLEMS IN ASCERTAINING "AVAILABILITY" AND "SEEK-WORK"

The importance of studying the appropriate standards and procedures for determining availability for work and seeking work is unquestioned. In order to receive unemployment insurance benefits, a claimant must be able to work and be available for work, among other criteria. Most unfortunately, these simple phrases have no easy interpretation in the complexities of the labor market, yet when a worker files a claim for benefits, a necessity arises to test whether he is still in the labor market and genuinely unemployed. The necessity arises from the California Unemployment Insurance Code and from the logic of unemployment insurance. Further, the numbers of workers involved and the amount of funds being socially expended dictate study of the area. Currently, the Department of Employment has claimant "contacts" in connection with unemployment insurance running at a rate

of 15,000,000 annually. Regular unemployment insurance benefits for eligible claimants have been in excess of \$400 million on an annual basis for the last several years.

Dictionary definitions of "availability" and "seek(ing) work" are insufficient as operational guidelines for unemployment insurance agencies. With respect to availability, for example, notions such as being "usable," "attainable," and "accessible" for work only serve as substitutes for the term "availability" for work, rather than guidelines. In order to determine what constitutes "availability" for work and "seeking" work seems to require that those authorizing the payment of unemployment insurance benefits have at least three types of information:

- (1) General labor market and employment information.
- (2) Information regarding the individual claimant's availability.

(These two types of information are interrelated, but they are sufficiently distinct to be treated separately, especially since the Department of Employment views them separately, and is so organized—the unemployment insurance section, and the employment service section.)

Ascertaining what constitutes availability as well as reasonable efforts to seek work also involves a level of information concerning what is "suitable" work. The California Unemployment Insurance Code, as others, states rather generally that suitability means (Section 1258) "work in the individual's usual occupation, or for which he is reasonably fitted . . ." A third type of information is thus required:

- (3) Determination of the individual circumstance of the claimant, *relative* to the suitability of the work which he must seek, and for which he alleges he is available.

#### *General Labor Market and Employment Information*

Considerable breadth of information is required by the Department of Employment regarding general labor and employment conditions. Not at all exhaustive of the type of information required would include general economic conditions, sectoral conditions, status and purpose of the unemployment insurance law relative to those previous conditions, and broadly, the developmental level of the economy.

Most potent as a factor influencing "availability" for work is the general employment level. During a period of relatively high unemployment, ignoring sectoral factors (such as mobility of workers by geographic and occupational status), jobs are obviously scarce. Thus, determining whether claimants have substantial job limitations in the work they seek, is somewhat irrelevant due to the overall level of unemployment. "Availability" tests of the Department of Employment might well be broad in such an environment without substantial social costs, since there is little reason to question the claimants' allegations that they are, indeed, available for work. Under reverse conditions, such as have existed in 1967-68, jobs are somewhat more plentiful for the employable, thus the presence of the claimant, alleging availability, raises presumptions of unavailability. In other words, tests of unavailability might be more frequent or searching.

The need for sectoral factor information, however, cannot be ignored. The labor market is not homogeneous as a supply. It cannot be presumed that there is a high degree of substitutability of its elements. Thus, to suggest a few of the dimensions about which information is needed, the Department of Employment must administratively set standards, reflecting its own experience and judgment or judicial and quasi-judicial rules, which reflect the geographic mobility of the labor force, the intra- and inter-occupational mobility, the "stickiness" of wage structures, collective bargaining agreements, and demographic characteristics of the labor force. Operationally, availability becomes a question of geographical mobility in terms of what is considered a reasonable "commute" for an unemployed who is offered a job in another locality, reflecting customary modes of travel, and the existence of public or private transportation. Again in operational terms, availability becomes an occupational question concerning the degree to which skilled, semiskilled and unskilled workers are interchangeable within these classifications, occupationally, and within one industry or between industries. In terms of wage structures, availability concerns the degree to which a wage rate which is less than the previous wage earned by the claimant is suitable, and thus if refused means unavailability. Availability guidelines cannot, for obvious reasons, conflict with collective bargaining agreements. At a minimum, they would be grossly contrary to labor market conditions. Finally, the demographic characteristics influence availability. The aged, the partially handicapped, the semi-illiterate, and the untrained, for example, present special problems, which would seem to require no elaboration.

Degree of attachment, of course, as a sectoral factor, is a reason why employment of many workers is limited and thus raises questions of availability during unemployment. The Unemployment Insurance Code, through earnings tests and benefit formula, identifies in general fashion the part-time worker. It does not suggest, however, administrative guidance to the determination of availability for that portion of the population which is attached sufficiently to the labor force to meet earnings tests, yet is attitudinally inclined to part-time attachment. It is estimated that roughly 20 percent of the labor force work parttime; of these, one-half work more than 27 weeks per year and fully a third work the full year on a part-time basis. Unfortunately, there is a tendency to view availability questions in terms of 40-hour weeks, whereas a substantial portion of the population chooses to work in lesser amounts.<sup>1</sup>

What is considered to be "availability" must also articulate with the purposes of unemployment insurance. The law, after all, does not exist independent of general economic conditions. The California Unemployment Insurance Code, as most others, specifies the intention to pay benefits to the individual who has ordinarily been a worker, and who would be a worker now, except for his inability to find suitable

S. Saben, "Work Experience of the Population in 1962," *Monthly Labor Review*, Vol. 87, No. 1 (January 1964), Table 1. This is not to imply that a full 20 percent of the labor force prefer to work parttime. The 20 percent represents unemployed because of unemployment, illness, disability, armed forces, vacations, domestic circumstances. The proportion actually preferring to work parttime, and able to work fulltime, is unknown.

work. The basic purpose of law seems to be the provision of an "orderly" way to find relief for the distress of the unemployed worker, without individual measurement of need, on the assumption that there has been a wage loss or diminution of opportunity imposed by the economic system. Thus, the notion of "deprivation" caused by general economic conditions is present in the law, rather than any notion that the individual has a "right" to draw benefits, apart from economic conditions or his own availability. Secondary purposes of the law, of course, are present, such as the stabilization of purchasing power, maintenance of aggregate demand, and the maintenance of "labor standards" through assumptions about what is "suitable" work. The latter purpose exists in most unemployment insurance laws, hence the pertinence of availability, seek-work, and suitability of work issues in administration.

Finally, it should be noted that the administrative policy concerning availability, suitable work, and seek-work must of necessity change over time due to developmental conditions. The economy of the depression, geared as it was to survival more than the attainment of a standard of living, suggests that the breadth of what constitutes "suitable work" was far greater than it was in the 40's and even the 50's. The 1960's, perhaps, can be characterized more in terms of employment goals by individual aspirations for *types* of standards of living. We now have accepted leisure patterns, considerably higher levels of real income, more specialized occupational classifications, and altered work motivations. These factors, and others, act on claimants not such that they are less willing to work, but that they are more stratified and sophisticated concerning the types of work they will accept (and that administrative agencies will require them to accept if offered) which contribute to their desired types of standards of living. This complicates immensely the determination of availability, suitable work, and seek-work by older standards.

#### *Individual Claimant Information*

Pertinent information concerning the individual claimant's *availability* and the *suitability* of the work which he must seek is difficult to identify. Ideally, the Department of Employment should seek to ascertain the individual claimant's intent to seek work, his attitudes toward work, and the range of work which is suitable for him. Psychological testing, extensive counseling, and measurement of the depth and breadth of work skills suggest themselves as media for identifying availability and suitability. Obviously, the cost, in terms of time and money, precludes the use of this approach generally. Indeed, it may be that these media are not necessary for the bulk of claimants.

Short of the use of the above media, the Department of Employment is forced to assume that it can ascertain availability and suitability through a series of short interrogations of the claimant, and through requirements that the individual perform certain acts. The administrative procedures provide a framework for examining the nature and timing of the information required by the department from claimants about availability for and suitability of work.



To file a claim for benefits, the individual must initially complete a "claim" form, DE 1101A. Aside from information for identification purposes, the claimant is requested to indicate why he is no longer working on his last job. Assuming the claimant has a "valid" claim and is not immediately disqualified (see later), he receives an additional questionnaire, entitled "Claimant Eligibility Profile" (DE 1893). The information requested covers the following items:

- |                                    |  |
|------------------------------------|--|
| —marital status                    | —source of transportation  |
| —length of residence in California | —geographic locality preferred   |
| —education                         | —commute time  |
| —type of work wanted               | —physical handicaps  |
| —work credentials                  | —other work skills, length of experience, and pay rate   |
| —source of previous jobs           | —last three employers, type of work, length of job, date left, pay rate, source of job, and reason for leaving |
| —acceptable starting wage          |  |
| —day or time limitations           |  |

Two weeks later, the claimant returns to the department. If he does have a valid claim, the claimant is exposed to an "Eligibility Benefits Rights Interview" and is given literature to read explaining his rights and responsibilities under the law and the implementing regulations. The type of work the claimant must seek is ascertained by the department and union reporting requirements noted, if any; number of dependents is occasionally recorded. Need for retraining is also noted at this time. The interview takes six minutes.

At this point, the claimant has fulfilled the one-week waiting requirement of the law. A weekly certification card is also given the claimant, DE 4581. The questions on the weekly certification card pertain to the previous week of unemployment. The information asked is:

1. Did you work in that week?
2. How much did you earn before deductions, whether you were paid or not? If you had no earnings write "none."
3. Were you physically able to work full time each regular work day that week?
4. Was there any other reason you couldn't have worked full time each regular work day that week?
5. Did you try to find work for yourself that week?
6. Was any work offered you that week?
7. Did you have a change of address in that week?
8. Did any person in this office or anywhere else offer you a referral to a job that week?

On completion of the questions on the weekly certification form at the return of the claimant to the department, the claimant will be paid for his first compensable week of unemployment.

This weekly certification, by means of answering the same questions, is repeated for five weeks. Normally, for the sixth week, the claimant is given a card on which are almost identical questions, DE 2402. An interview by a representative of the department ensues. This is called the periodic eligibility review, and is designed to ascertain among other things the specific seek-work activities of the claimant for the past six weeks, before allowing him to continue drawing benefits.

## PRIMARY AND SECONDARY SCREENS

Essentially, the requirements that the individual (1) must have a valid claim, and (2) must meet certain availability and "suitable" work standards before he can draw benefits amount to what might be regarded as "primary" and "secondary" screening devices in unemployment insurance.

*The Valid Claim: A Primary Screen*

An individual filing a claim for unemployment compensation benefits has a valid claim only if he has had wages in covered employment amounting to at least \$720 in his "base" period. The base period is a four-calendar-quarter period which precedes his claim for benefits. For example, if a claimant filed his claim for benefits in May, June, or July, his base period would be the four calendar quarters of the prior calendar year. If he filed his claim in August, September, or October, his base period would be the second, third, and fourth calendar quarters of the prior year and the first calendar quarter of the current year. Thus, the unemployment insurance system is so designed that it looks first at an individual's past work experience as the standard and then a judgment is made as to whether he is potentially entitled to benefits from the system. If the claimant's past work experience is adequate as measured by the single standard of dollar amount of his earnings in covered employment during his base period, he is potentially eligible; that is, he has a "valid" claim. There are no tests of how long the claimant worked; that is, no "weeks-work" tests in California.

*Assumptions Underlying the Concept of a Valid Claim*

In theory, an argument could be made for the proposition that an individual who had prepared himself to work at a particular occupation and after such preparation seeks employment in that occupation should be entitled to benefits under the unemployment insurance system, if he is unable to find work. (Certain proposed federal plans envision this theoretical optimal, although not necessarily through the unemployment compensation system.)

The system has rejected this proposition and appears to have done so for pragmatic reasons. First, it is believed that if an individual is to receive benefits from the system, at least some financial contributions to the system should have been made in his behalf; although there is no direct relationship between the contributions made in his behalf and the amount of benefits he may receive from the system. Second, the unemployment insurance system has as a major purpose the relief from the distress of hardship which results from wage loss due to unemployment. This notion is of major importance in the system because it constitutes the basis for the rationale which justifies the system. Third, and perhaps most important, past work experience was viewed as the most realistic test of whether an individual is meaningfully related to the labor market. The phrase "attachment to the labor market" is one of the most commonly used and one of the conceptually most difficult phrases in the lexicon of unemployment insurance. In essence, the phrase refers to an individual's attitudes, intents, goals and acts.

Desirable as it would be to have the techniques by which each of these could be accurately determined, it is almost self-evident that such is not possible where the system is applicable to millions of individuals functioning in a range of circumstances which defy order or structure.

The practice of looking to the past as the most nearly valid predictor of the future has deep roots in human experience. A judgment is made as to whether an individual will be able to perform satisfactorily a particular task by inquiring as to whether he has performed this task satisfactorily in the past. Character references are sought on the assumption that an individual will behave in the future in a manner remarkably similar to the way he has behaved in the past. Examples of this notion are legion and rest, of course, on the idea of continuity in human affairs. In sum, all our experience tells us that for the vast majority of people their nature and their circumstances today and tomorrow will be almost identical to those of yesterday. It is this underlying fact which gives substance and support to a device such as the valid claim as a test of whether an individual should or should not be considered potentially eligible for benefits under the unemployment insurance system. The remaining screen which is applicable only to those who have established a valid claim, is confirmatory in nature. When it contradicts the basic assumption implicit in the valid claim, certain penalties ensue. But the essential point remains that the basic screen of eligibility is whether or not the individual can establish a valid claim; the other screen is simply a checkpoint and, by its nature, is secondary.

#### *Able and Available, etc., Tests: The Secondary Screen*

The point at which considerable information and judgment are required of the Department of Employment is the secondary screen. When the claimant has met and passed the primary screening device, he is subject to disqualification from benefits if the department finds that he has committed certain acts, has failed to do certain things, has personal circumstances of a particular nature, and has not fulfilled certain technical requirements. Strictly speaking, the primary screen does not address the question as to whether the individual is, at the time he files his claim, ready, willing, and able to seek and accept suitable employment. The primary screen is simply a mass production device which determines who will be initially included in the eligible group—conditionally—and who will not. Of course, there is the implicit presumption that the individual is ready, willing, and able to seek and accept suitable employment.

On the other hand, there are circumstances under which there is an explicit requirement that availability must be proved when the individual files a valid claim as a condition of being entitled to benefits. The Unemployment Insurance Code requires such proof for certain acts relating to *past* behavior. Thus, the secondary screen is composed of two elements, those circumstances which related to past behavior, and those that relate to current behavior, which can be designated "hard" and "soft." \*

\* The "hard" and "soft" distinction will be carried through the study. Generally, the "hard" aspects refer to past behavior which can be verified objectively and the penalty for which relative to the receipt of benefits is more severe than the penalty relative to "soft" aspects, a matter of intention that cannot be directly and objectively verified.



When the claimant initially states his reason(s) for being unemployed ("Why are you no longer on the job?"), questions relating to *past* behavior are immediately raised. The claimant's answer will fall into one of the following categories:

1. Voluntary quit.
2. Discharged for misconduct.
3. Voluntarily quit for domestic reasons.
4. Dismissed because work performance did not meet employer standards.
5. Laid off, lack of work.

Of these, the first three are potentially disqualifying. The issues involved are the result of past specific behavior, either on the claimant's part or on the part of his former employer. Since the former employer is notified of the reason given by the claimant for his being unemployed, there is an opportunity for the department to ascertain factual circumstance relative to any assertion of the claimant. If the former employer does not agree, he provides his version as to why the employment relationship was terminated. At this point, the department examines the evidence and makes a "determination"—a decision as to the reason why the claimant is no longer employed. If such reason is disqualifying, no benefits are paid during the ensuing period of unemployment.

Unemployment insurance benefits are not paid to those claimants whose unemployment is caused by their own voluntary quitting of a job without good cause, or by their discharge for misconduct in connection with their most recent work. The rationale of the law rests on the assumption that the claimant could have remained employed, had he chosen to do so. More specifically, by his own act, he created the circumstance of his unemployment, and by his own act, he has demonstrated his personal preferences toward his employment status. Thus, there is basis for the belief that he has no interest or limited interest in being employed. In order to rebut that belief, he is required to perform a specific act: He is required to return to employment status, and to earn five times his weekly benefit amount before being entitled to benefits *should he become unemployed again*.

Once questions concerning past behavior are resolved, questions concerning current behavior come into play. These questions relate to current behavior of the claimant and to the credibility of his statements regarding his personal circumstances as they relate to his availability for work. They also relate to the credibility of the statements as to the claimant's behavior in connection with his efforts to seek work and to the reasonableness of his attitudes and standards as to what constitutes suitable work. None of these questions are amenable to the kind of fact gathering and weighing that can be employed with respect to the questions relating to past behavior. The principal means of gathering this information is a weekly certification card. The questions thereon highlight the difficulty in gathering substantive information. With respect to *able and available issues*, the questions asked are:

1. Were you physically able to work full time each regular workday that week?



2. Was there any other reason you could not have worked full time each regular workday that week?

With respect to *willingness to work and efforts to seek work*, the questions are:

1. Did you try to find work for yourself that week?
2. Did any person in this office or anywhere else offer you a referral to a job that week?

With respect to *refusals of work opportunities*, the question is:

Was any work offered you that week?

The remaining questions do not address any of the above issues.

The certification card provides for "yes" or "no" answers. Normally, an "incorrect" answer will result in oral interrogation. Of course, there is the presumption that claimants will be truthful. However, a principal conclusion can be made from viewing these questions and the means of their administration: the standards or criteria used in answering these questions are established by the claimant more than they are by the department.

There are other sources of information for the department in ascertaining standards and criteria which will be addressed momentarily, but support for the conclusion noted will be established first. With respect to the question concerning referrals, the claimant knows what type of work he will accept, and thus will not overtly seek work which he will not. Clearly, the claimant utilizing a private employment agency typically does so in terms of a specific type of work or occupation, rather than in terms of any employment. Thus, a referral might not be offered by such an agency, although in terms of departmental criteria such a referral should have been made. Beyond the case of the private agency, the interactions would seem to hold true. Referrals are seldom made from the Employment Service if the claimant does not appear regularly for referral, and there is no requirement that he do so. (No exhaustive treatment of the referral mechanism of the Employment Service has been made; however, evidence suggests that those appearing regularly for referrals receive more referrals than do those whose work applications are on file but do not personally appear and request referrals regularly.) Likewise, beyond the referral issues, there is the ability of the claimant to place himself in a position where he does not receive an offer if, by his own criteria, the work is not "suitable." Techniques for "preventing" an offer of work from being made are known by the claimants.

Willingness to work and efforts to seek work also involve claimant criteria. The department has no administrative rule that a certain number of employers be contacted per week; and unless it has some reason for questioning the veracity of the claimant, it does not verify a claimant's statement that he contacted particular employers. (Expense and relations with the employer community act as serious constraints to such a procedure.) Thus, if the claimant knows a particular employer is not hiring, as does the department, that particular employer becomes a "safe" citation as evidence of seeking work and

willingness to work. This is not to suggest that the claimant is untruthful, but to suggest that he learns of employment conditions for that type of work which he defines as being suitable; and, that this influences his seek-work pattern. There is no necessary reason to assume that all claimants will expand their seek-work patterns as they learn of employment conditions. They may be unwilling to consider unrelated occupations, unaware of unrelated occupations, or generally apathetic.

Most perplexing to the department are the general able and availability questions. There is no test of ability to work, other than the claimant's statement that he was ready the previous week in terms of the question asked. The claimant knows of the potential loss of benefits for the previous week, and his appearance to receive benefits is a positive indication that he desires to receive them. Therefore, it can be assumed that his attitudes are positively disposed to lead the department to accept his availability statement. There is no hour-by-hour accounting required, nor could there be. Which of the variables that are pertinent to the claimant can only be guessed at by the department. It is unlikely that some claimants will volunteer information which will provide clues to unavailability. Indeed, in the claimant's view, some of these may not be pertinent variables, by his standards and criteria.

Finally, as support for our conclusion, it should be noted that the claimant is very much the subject of a learning process in connection with efforts and willingness to seek and accept employment, and in connection with what constitutes suitable work. From fellow claimants, from his own previous experiences with the claimant processing, from oral interrogation, the claimant perceives his relationship over time. Should he be disposed to alter his behavior, attitudes, etc., in the seek-work process, he perceives the role he plays in establishing limits within those of the department.

There are other sources of information for the department; however, this weekly certification card is the principal source. The eligibility and benefits rights interview may reveal, through oral interrogation, whether there are eligibility questions, but these interviews seem more inclined toward developing the claimant's future behavior, rather than upturning availability, etc., issues. More specifically directed to investigating attitudes and assisting the claimant in seek-work behavior is the periodic eligibility review. The name of the review itself suggests that it is more directed to investigating attitudes and past behavior than it is toward assisting the claimant in seeking work. Regardless, several implications of the "PER" should be noted. First, it is periodic (regularly scheduled), and thus the week before the review, the claimant is alerted that he will be subjected to a more intensive interview when he presents himself to receive benefits. Alerting the claimant in this manner is capable of altering his seek-work habits positively, to the extent he may believe his past pattern has been insufficient. That the review is more "intensive," however, is questionable. The questions which the claimant is required to answer are identical with those on the weekly certification card, with the exception of two questions which deal with employment as a farmer, identification of student status, and self-employment. The more in-

tensive nature of the review is the oral interrogation of the claimant's seek-work behavior and suitable work definition. (For many claimants, however, this review is perfunctory. Union members with B-1 seek-work plans, and other claimants are not required to file work applications with the Department of Employment's Employment Service office.)

There has been no attempt to review the administrative procedures in connection with the PER. Our point in noting the PER in the previous context has been to note that in connection with it, the claimant is still very much in control of the standards and criteria which are used to determine what constitutes availability, seeking work, and suitable work. These criteria and standards are not independent of the department's, but the nature of the relationship suggests the primacy of the former over the latter.

The "soft" aspects of the secondary screen can be seen to relate directly to current behavior of the claimant. The penalty for failure to meet the current behavior aspects is a disqualification, which can be of two types: fixed period and indefinite. A refusal of suitable employment results in a disqualification from 2 to 10 weeks, unless the refusal is "with good cause." (See later.) A failure to seek work as directed results in a disqualification for each week in which the claimant fails to do so. A claimant is also disqualified "indefinitely" for any week during which he was physically unable to work on one or more regular work days, or otherwise unavailable for work. (The department removes the disqualification as soon as the claimant demonstrates he is again physically able and available for work.) Finally, there are penalties for willful omissions and misstatements in order to receive benefits, and unmet technical requirements such as reporting for benefits on particular days, at particular hours, etc.

The severity of these penalties is considerably less than those penalties connected with "hard" aspects, such as voluntary leaving without good cause, where the penalty is denial of benefits pending reemployment. The differences in penalties seem to be based on the more temporary nature of the condition of unavailability of the claimant in connection with the "soft" issues. In the case of being unable or unavailable, there is the rationale that the individual is not a viable member of the group seeking employment. The issue of whether he would have been employed had he not been unavailable or unable is irrelevant. In the failure-to-seek-work issue the probability of employment is also irrelevant, but there is an additional matter. It is assumed that an individual who wants to be employed will let that fact be known in those places where there is some probability that an awareness of his wish will result in its being fulfilled. If the individual does not let the fact be known, or lets it be known only in those places where the probability of employment is low, there is a genuine question as to whether the alleged fact is anything more than a posture to obtain benefits. The rationale, again, is that the individual is not a viable member of the group seeking employment. The penalty views this as a temporary condition which, when corrected, will restore the benefit payments.



The rationale of the penalty for failure to seek and for being unavailable or unable seems clear. In connection with a refusal of suitable work, however, the same rationale seems unclear. Although the penalty, from 2 to 10 weeks disqualification, is slightly more severe, the rationale of temporary condition does not apply. (Most of the disqualifications for refusals are considerably less than 10 weeks.) Up to the point at which a claimant refuses an offer of suitable work, it is assumed he is making every reasonable effort to return to employed status. His refusal of suitable work contradicts that assumption, and the penalty which results seems to be more punitive than assertive. The penalty does not require a specific affirmative act to reestablish that the claimant wishes to become an employed. While it would appear that the logic of the range from 2 to 10 weeks anticipates accommodating a variety of circumstances by severity, given the contradiction of the assumption, a reemployment penalty such as for voluntary quitting seems more appropriate. By the claimant's own action, he has indicated his preference for unemployment status.

Although a reemployment or monetary penalty such as the one which applies for a voluntary quit without good cause might be thought as rather severe for a refusal of suitable employment without good cause, such a penalty inexorably follows from the logic of the circumstance. Any reluctance to accept this view stems from beliefs that those seeking work, encountering offers of suitable employment, may then apply highly personal variables in their deliberations as to whether to accept such offers. Such personal variables, however, are apart from what constitutes suitable work, and should be so recognized. It is irrelevant to argue that the employer has the alternative to offer or not offer, using some of these personal variables, as a reason for having a lesser penalty for refusal of suitable employment for the claimant, who has only the alternative of loss of benefits or acceptance.

#### THE EFFICACY OF THE PRIMARY AND SECONDARY SCREENS

The logic of the primary and secondary screen mechanisms is now stated. The primary screen—the test of sufficient earnings in the claimant's base period—does not raise availability, etc., issues. It is correct to assume that there are no AA, SW, and ESW\* issues when determining the "degree of attachment" of the claimant (if for no other purpose than for determining the amount of the potential weekly benefit). The secondary screen with its emphasis first on past behavior and then, secondly, current behavior, essentially tests the validity of the "availability," etc., assumptions. This report is directed to testing of the efficacy of the secondary screen, most particularly that part of it which is concerned with current behavior: ". . . the standards and procedures appropriate for determining availability for work and reasonable efforts to secure employment . . ."

The efficacy of the secondary screen can be measured only indirectly. That is, there is no feasible direct method of testing whether or not the secondary screens separate those ready, willing and able to seek and

\* Able and available, suitability of work, and efforts to seek work issues.



accept employment. Our previous comments on the difficulties in defining availability for administrative purposes leave only indirect methods of ascertaining efficacy. First, we have chosen to investigate the interrelationship between disqualifications and benefits received subsequently, on the grounds that testing the ability and character of existing methods of disqualification would reveal strengths and weaknesses. Second is the relationship between disqualifications which depend on prior specified acts (the "hard" issues) of the claimant, and disqualifications which depend on his current behavior (the "soft" issues), and thus his attitudes and conduct in seeking work and being available. With respect to multiple disqualifications, our investigatory grounds have been more in terms of defining the character of the multiple cases than in terms of defining strengths and weaknesses.

## SECTION II

### INTRODUCTION: DISQUALIFICATIONS AND CLAIMANTS

This section is an analysis of a sample of claimants disqualified at least once during their benefit year. The analysis and the statistics in this section are exemplary, rather than statistically supportable statements of the general distribution of disqualifications and of the interrelationships between disqualifications by kind of disqualification where they are multiple in nature. Also, an attempt is made in this section of the report to set forth a theoretical statement of the nature of the framework within which the claimant functions in the unemployment insurance system after he has established a valid claim. Later, statistically reliable data are presented from a larger sample of claimants, pertaining to earnings characteristics of claimants.

As noted, the primary screen is simply a determination of whether a claimant has a valid claim; namely, does the individual filing a claim for benefits have earnings in covered employment in the amount of at least \$720 in his base period. The secondary screen comes into operation and is relevant to only those claimants who successfully have passed the primary screen. The claimant has been deemed to be potentially eligible for unemployment insurance benefits in that he has met the monetary test required to establish a valid claim. This secondary screen is subdivided into two parts. One part refers to the "hard" aspects of the secondary screen and the other part to the "soft" aspects of the secondary screen.

#### *The Claimant Sample*

The claimant sample discussed in this portion of the report is drawn from approximately 3,000 claimants whose benefit year ended some time during the period October 1, 1967, through May 1968, or who exhausted their benefit rights during this period. Of the approximately 3,000 claimants in this sample, 1,320, or about 44 percent, were disqualified at least once, including cases where disqualifications were assessed because of partial employment or failure to comply with department reporting requirements and procedures.

The claimants in the sample against whom the department assessed one or more disqualifications during the benefit year are discussed in the remainder of this section of the report. The format in analyzing the claims' histories of disqualified claimants is as follows:

- (1) For claimants who had only one disqualification during the benefit year, the data are presented in the section of the report under Single Disqualifications.
- (2) Claimants having more than one disqualification during the benefit year are treated under the section headed Multiple Disqualifications.

(3) Multiple disqualifications are divided into two subdivisions:

- a. Simultaneous—those multiple disqualifications where both disqualifications were assessed at the same time and relate to the same event.
- b. Time separated—those cases where the two disqualifications are separated by a period of time and the disqualifications relate to separate events.

### SINGLE DISQUALIFICATIONS

#### *The Secondary Screen—"Hard" Aspects*

As previously noted, an individual with a valid claim for benefits is subject to a monetary disqualification if he (1) voluntarily quit his last employment without good cause; (2) was discharged from his most recent employment because of misconduct in connection with his work; (3) voluntarily left his last employment for domestic reasons. It is important to note that the monetary disqualifications apply to specific acts which already have occurred at the time the issue is before the Department of Employment for its determination. Furthermore, at the time the act took place the claimant was employed and, therefore, at least in most cases, the employer had some knowledge of the circumstances under which the employment relationship was terminated.

#### *Voluntary Quits and Discharges for Misconduct*

Of the approximately 3,000 sample claimant records reviewed, 220 claimants, or about 7 percent, were disqualified during their benefit year because they voluntarily quit their last employment without good cause or were discharged for misconduct in connection with their most recent employment. None of these 220 claimants would be entitled to draw any benefits until they had earnings equal to at least five times their weekly benefit amount; however, 67 claimants did, in fact, become reemployed, have sufficient earnings to "purge" themselves of the disqualification and, subsequently, become unemployed and draw benefits.

#### *Benefit Experience Subsequent to Purging*

Since the minimum weekly benefit amount is \$25 and the maximum weekly benefit amount is \$65, the required earnings to "purge" range from \$125 to \$325. These are extremely modest amounts in view of the fact that the average weekly wage in insured employment currently is in excess of \$130. At the average weekly wage, disqualified claimants could purge themselves of the monetary disqualification in from one to three weeks. However, 21 of the 67 claimants who subsequently drew benefits after being disqualified did so only after more than 24 weeks had elapsed subsequent to their initial disqualification. Two-thirds of the 67 claimants who drew benefits did so only after more than 10 weeks had elapsed subsequent to disqualification. This claims pattern strongly suggests that when a disqualified claimant is required to obtain additional employment as a condition of purging the disqualification, he continues working and earning beyond the point required to again qualify for benefits (Table 1).

TABLE 1  
VOLUNTARY QUILTS WITHOUT GOOD CAUSE AND DISCHARGES FOR MISCONDUCT:  
EXPERIENCE SUBSEQUENT TO DISQUALIFICATION

Amount of monetary disqualification	No benefits after disqualification	Additional benefits after disqualification	Elapsed weeks between disqualification and additional benefits							Totals
			1-3	4-7	8-10	11-15	16-20	21-24	24+	
\$125-150-----	25	(10)	--	--	1	3	--	2	4	35
155-175-----	22	(3)	--	--	1	1	--	--	1	25
180-200-----	14	(8)	--	--	3	--	1	1	3	22
205-225-----	16	(2)	--	--	--	--	--	--	1	18
230-250-----	21	(8)	1	2	--	1	2	1	1	29
255-275-----	13	(3)	--	--	--	--	1	1	1	16
280-300-----	10	(5)	--	--	2	--	--	1	2	15
305-325-----	32	(28)	2	5	7	3	1	2	8	60
Total-----	153	(67)	3	7	14	8	6	8	21	220

Source: Review of claimant files.



The department's data also support this suggestion. (Department of Employment, Report 525 #2, August 2, 1968.) A survey based on a 1-percent sample of disqualifications on the issues of voluntary leaving or discharge for misconduct during 1966 reveals 73 percent did not draw any benefits subsequent to disqualification (Appendix A).

Concurrent with our data, the department's larger sample (921 claimants vs. 220 claimants) reveals the highest proportion of those drawing benefits subsequent to disqualification occurred among those with higher weekly benefit amounts. This is interpreted as indicative of the ease with which the disqualification can be purged. Among women, the highest proportions drawing benefits occurred among those with low weekly benefit amounts, particularly at the \$25 minimum, which is interpreted as a reflection of the differential wage structures between men and women, and perhaps a reflection of the intermittancy of employment of women at the lower income levels.

Of the 921 claimants disqualified, 330 specifically "purged" their disqualifications. This figure has pertinence in the sense that 330 specifically contacted the department to purge the disqualification, undoubtedly in anticipation of usage of unemployment insurance benefits during the remainder of the benefit year. Significantly, of the 330 purging, 250 actually drew benefits after purging. But it should be made clear that the remainder, 691, quite likely continued to be employed and simply did not contact the department to "purge" during the benefit year. While wage records are incomplete with respect to those not drawing benefits, a large proportion, well over 50 percent, are believed to have earned sufficient wages to purge had they wished to do so.

### *Voluntary Quit for Domestic Reasons*

Only a few claimants were disqualified during their benefit year because of a leaving of work for domestic reasons. Of these disqualified claimants, about two-thirds of them drew no benefits subsequent to disqualification (Appendix B).

It should be noted that a disqualification for leaving employment for domestic reasons seldom stands by itself. By its nature, a domestic disqualification frequently is combined with a voluntary quit or an availability issue. This point will be discussed fully under multiple disqualifications.

### *The Secondary Screen—"Soft" Aspects Able and Available Disqualifications*

This is by far the most important of the time disqualifications. Able and available issues attempt to deal with current status, situation, attitude, or behavior of the claimant. In effect, the Department of Employment is charged with the task of trying to ferret out the situations, circumstances, or current behavior of the claimant significantly affecting his availability for work and his ability to work.

One hundred seventy five claimants in the sample were disqualified because they were found to be unavailable for work or unable to work. This is the major time disqualification and poses problems not inherent in the issues which result in monetary disqualifications or in the other time disqualifications for false statements or refusals of suitable work

TABLE 2  
ABLE AND AVAILABLE: EXPERIENCE SUBSEQUENT TO DISQUALIFICATION

Disqualification period	No benefits after disqualification	Additional benefits after disqualification	Elapsed weeks between disqualification and additional benefits													Totals
			1	2	3	4	5	6	7	8	9	10-15	16-20	21-30	31-40	
Indefinite-----	34	(39)	--	2	9	1	1	1	2	4	1	11	2	3	2	73
1 week-----	5	(71)	60	4	3	--	1	1	--	--	1	--	1	--	--	76
2 weeks-----	3	(14)	--	12	2	--	--	--	--	--	--	--	--	--	--	17
3 weeks-----	--	(4)	--	--	1	1	--	--	--	--	--	--	--	--	--	4
4 weeks-----	--	(2)	--	--	--	1	1	--	--	--	--	--	--	--	--	2
5 weeks-----	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
6 weeks-----	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
7 weeks-----	1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1
8 weeks-----	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
9 weeks-----	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
10 weeks-----	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
10 weeks-----	--	(2)	--	--	--	--	--	--	--	--	--	--	--	1	1	2
Totals-----	43	(132)	60	18	15	3	5	2	2	4	2	11	3	4	3	175

Source: Review of claimant files.

without good cause, both of which are relatively minor in terms of numbers of claimants.

### *Benefit Experience Subsequent to Disqualification*

Of the 175 claimants who were disqualified on an able and available issue during their benefit year, 132 drew benefits in the period subsequent to that for which they were disqualified; only 43 claimants, or 24 percent, did not. A smaller percentage of indefinitely disqualified claimants—those whose benefits are withheld until the disqualifying circumstance no longer exists—drew benefits subsequent to disqualification than did claimants disqualified for one week. Approximately 54 percent of the indefinitely disqualified claimants drew benefits, 39 of 73. On the other hand, those claimants who were disqualified for only one week exhibited a high propensity to draw subsequent to the week of disqualification. Ninety-three percent of those disqualified for one week, all but five, drew additional benefits.

In the aggregate, 60 of the 132 claimants who drew additional benefits subsequent to disqualification did so beginning in the first week following the end of their period of disqualification; 18 in the second week; and 15 in the third week. The remaining 39 claimants who drew benefits after the end of their period of disqualification were scattered from the fourth to the fortieth week, with no particular pattern. (See Table 2.)

### *Employment Experience Subsequent to Disqualification*

Of the 132 claimants who drew additional benefits after being disqualified, only 32 had any intervening employment before drawing additional benefits; 100 did not. It seems reasonable to assume the great bulk of these 100 claimants without intervening employment are accounted for by the 101 claimants who drew additional benefits beginning within five weeks or less after the end of their disqualification period.

TABLE 3

**A PERCENTAGE ARRAY OF ABLE AND AVAILABLE DISQUALIFICATION ISSUES, WHERE THE AA DISQUALIFICATION WAS THE FIRST DISQUALIFICATION IN THE RECORD**

Benefit determination guide number	Description	Percent
235	Health or physical condition.....	37.6
160	Efforts or willingness to work.....	18.1
155	Domestic circumstances.....	9.6
450	Time.....	9.0
360	Personal affairs.....	8.6
150	Distance to work.....	4.8
040	School or training.....	3.8
415	Self-employment and other work.....	2.8
475	Union relations.....	1.9
005	General.....	.9
250	Incarceration.....	.9
365	Prospect of work.....	.9
370	Public service.....	.4
510	Nature of work.....	.4
		100.0

*Nature of Able and Available Issues*

Able and available issues cover a very wide range of situations. In fact, it is virtually impossible for a claimant to be disqualified under any of the other classifications without the suggestion of a possible able and available issue on which a determination should be made.

Accordingly, it is instructive to look at the benefit determination guide classifications for claimants whose first disqualification in a benefit year was on an able and available issue. Of these disqualified claimants, almost 38 percent were disqualified because they were found to be unable to work due to poor health or physical condition. An additional 18 percent of the total were disqualified because their efforts to seek work were unsatisfactory or they had demonstrated in some fashion that they were not willing to work.

In summary, these two classifications account for 56 percent of the claimants who were disqualified on an able and available issue during their benefit year. The next three benefit determination guide classifications in order of frequency are: domestic circumstances, time restrictions, and personal affairs, which combine to account for 27 percent of the disqualifications. The remaining 17 percent of the claimants are scattered among nine benefit determination guide classifications.

The above findings are confirmed when the cases of able and available disqualifications are expanded to include all claimants in the sample where an able and available disqualification appears, rather than limiting the cases to only those claimants where the able and available disqualification is the first disqualification in the record. Fifty-five percent of the cases involved either a disqualification for health reasons or lack of willingness to work and/or efforts to seek work.

*Relationship of Nondisqualifying Voluntary Quits and Discharges for Misconduct to Disqualifications for Health Reasons and for Failure to Seek Work*

Although single disqualifications accounted for approximately 80 percent of the cases where there was a disqualification for health reasons, these aggregate data disguise some significant relationships that should be stressed. In about one-third of the cases involving a single disqualification for health reasons, a prior or a simultaneous determination was made on either a voluntary quit or a misconduct issue. The essential point, of course, is that at least in the case of the simultaneous determinations, these "hard" issues of the secondary screen brought the able and available issue for health reasons to the attention of the Department.

In those cases where claimants were disqualified because of failure to seek work or made inadequate efforts to obtain work, single disqualifications accounted for a little over 75 percent of the total number of claimants disqualified on this issue. The data suggest there is little relationship between a disqualification for failure to seek work and a simultaneous or prior voluntary quit or misconduct-issue determination which is not disqualifying. In fact, in only about 7 percent of the cases was there such a determination in the record.



*Suitable Work and False Statement Disqualifications*

In the sample, claimants disqualified because of a refusal of suitable work without good cause or because of a false statement in order to obtain benefits were so small in number that no meaningful statements can be made about them. A total of eight claimants were disqualified on the false-statement issue, and 11 claimants were disqualified because of a refusal of suitable work without good cause.

## MULTIPLE DISQUALIFICATIONS

*Introduction*

Of the approximately 3,000 valid new claims examined, 177 claimants, or approximately 6 percent, were disqualified more than once during their benefit year. Of these 177 multiple disqualifications, 55, or almost one-third, resulted from at least one of the disqualifications being assessed because of partial employment or because of failure to comply with the reporting requirements or other administrative procedures of the department. The residual is 122 claimants, or approximately 4 percent, who were disqualified more than once during a benefit year.

The term "multiple disqualifications" refers to the situation where more than one disqualification was assessed against a claimant during his benefit year. Accordingly, multiple disqualifications may be divided into two classifications: those cases where the disqualifications are assessed simultaneously—that is, both disqualifications relate to the same situation or event—and those cases where the disqualifications are not directly related to the same event and are separated by a period of time.

These 122 claimants are too small in number to permit statistically valid statements about the frequency with which particular combinations of reasons for disqualification would appear in the total population. However, some insights still may be gained if the combinations of disqualifications which are absent are examined, as well as those combinations of reasons for disqualifications which appear most frequently.

It appears reasonable to hypothesize that certain combinations of disqualifications can be expected. The basis of this hypothesis is that particular acts or attitudes or circumstances influence, and are influenced by, other circumstances or acts. For example, it is reasonable to assume that a claimant who voluntarily quits for domestic reasons likely is a female and that she probably is not available for work. Similarly, claimants who quit voluntarily without good cause could be expected to have a high likelihood of unavailability. In both instances, the data bear out the hypotheses.

Table 4 ranks the multiple disqualifications in descending order of frequency, including those combinations of disqualifying issues where no claimants in the sample were disqualified.

TABLE 4  
COMBINATIONS OF ISSUES IN MULTIPLE DISQUALIFICATIONS  
IN DESCENDING ORDER OF FREQUENCY

<i>Issues</i>	<i>Number of claimants</i>
Able and available—voluntary quit	38
Able and available—able and available	13
Able and available—suitable work	12
Able and available—domestic quit	10
Voluntary quit—domestic quit	10
Voluntary quit—false statement	9
Able and available—false statement	6
Able and available—misconduct	5
Misconduct—false statement	5
Suitable work—voluntary quit	4
Voluntary quit—voluntary quit	3
False statement—false statement	2
False statement—suitable work	2
Misconduct—misconduct	1
Misconduct—suitable work	1
Misconduct—voluntary quit	1
Domestic quit—domestic quit	0
Domestic quit—misconduct	0
Domestic quit—suitable work	0
Domestic quit—false statement	0
Suitable work—suitable work	0
Total	122

### *The Secondary Screen—"Hard" and "Soft" Aspects*

As noted in Table 4, certain combinations of disqualifications appear with much greater frequency than do other combinations. One way of looking at this matter is to calculate the proportion of multiple disqualifications in which at least one of the disqualifying issues falls within the "hard" aspects of the secondary screen. In the aggregate, 71 percent of the claimants having multiple disqualifications involved cases where at least one of the disqualifying issues was because of a voluntary quit without good cause, a discharge for misconduct in connection with the most recent employment, or a leaving for domestic reasons. The residual, 29 percent, of the cases were those in which both the disqualifying issues fell within the "soft" aspects of the secondary screen.

### *Multiples: Time Separated and Simultaneous*

A second dimension of those cases involving multiple disqualifications pertains to whether there was an intervening time period between the disqualifications and, therefore, presumably the disqualifications applied to unrelated events; or whether the disqualifications were assessed simultaneously and presumably applied to the same event or circumstance. In the aggregate, 31 percent of the multiple disqualifications were time separated and 69 percent were simultaneous disqualifications.

### *Simultaneous Disqualifications*

#### *The "Hard" Aspects*

In three out of four cases where simultaneous disqualifications were assessed, at least one of the disqualifications was for a "hard" issue—

voluntary quit, discharge, or domestic leaving. Two out of four of these cases involved a voluntary quit without good cause. Wherever able and available issues were involved, in one out of five cases, the claimant was disqualified for health reasons; in one out of seven cases, the claimant was disqualified for failure to seek work. Thus, these two issues were present in a little over one-third of the simultaneous disqualifications in which there was a disqualifying able and available issue. It is reasonable to assume the disqualifications for health reasons are largely independent of the disqualifying hard issues. Thus, alternately expressed, in almost 80 percent of the cases where there was a disqualifying able and available issue, its discovery was triggered by the circumstances relating to the disqualifying prior behavior.

### *The "Soft" Aspects*

Twenty-four percent of the cases involved disqualifying issues, both of which were "soft." Two-thirds of these simultaneous disqualifications were equally divided between two able and available disqualifications for reasons other than refusal of suitable work; and two able and available disqualifications, one of which was a refusal of suitable work without good cause disqualification.

### *Time Separated Disqualifications*

#### *The "Hard" Aspects*

Sixty-one percent of the time separated disqualifications, as compared to 76 percent of the simultaneous disqualifications, involved claimants where at least one of the disqualifications was for a "hard" issue. A voluntary quit without good cause accounted for 83 percent of all the "hard" disqualifications. Where the disqualification for the "hard" issue preceded the "soft" disqualification, it is reasonable to infer that at least in some instances the department might well be more alert to potentially disqualifying circumstances or conduct of the the claimant.

#### *The "Soft" Aspects*

In 39 percent of the cases of time separated issues, both the disqualifications were for "soft" issues. Forty-seven percent were multiple able and available disqualifications for other than refusal of suitable work. An able and available disqualification combined with a refusal of suitable work without good cause accounted for an additional 33 percent.

### *Benefit Experience Subsequent to Disqualification*

A tabulation of claimants having two time separated "soft" disqualifications during their benefit year was made to ascertain whether during the intervening time period they became reemployed. The data suggest that the work experience of claimants having multiple, time separated "soft" disqualifications is no better, and may be slightly worse than the work experience subsequent to disqualification of claimants having only a single "soft" disqualification during the benefit year.

All the claimants having time separated "soft" disqualifications drew benefits during the period between the two disqualifications; however, only 20 percent of them had any intervening employment although the average length of time between the two disqualifications was almost 11 weeks.

### *The Major Disqualifying Issues*

Of the 122 claimants with multiple disqualifications, 65 were disqualified because of a voluntary quit without good cause (three disqualified twice); and 84 were disqualified on an able and available issue (13 disqualified twice). A strong interrelationship may frequently exist between these two disqualifications, particularly as most of the multiple disqualifications were simultaneous.

If an interrelationship does exist between these two disqualifications, a critical question is whether one is dependent upon the other, and the direction of the dependency. A second matter of major importance is the nature of the circumstances which seem to be common in able and available disqualifications and the significance and consistency of these circumstances.

### *Frequency and Nature of Able and Available Disqualifications*

In almost 69 percent of the multiple disqualifications at least one of the disqualifications was on an able and available issue, whether time separated or simultaneous.

It will be recalled that in the analysis of single disqualifications claimants disqualified for health reasons accounted for 38 percent of the cases; the comparable figure for multiple disqualifications is 33 percent, and the majority were simultaneous. For the single able and available disqualifications, 18 percent were for failure to seek work and the comparable figure for multiple disqualifications is 14 percent, two-thirds of which were simultaneous. Thus, although the differences are not large, 56 percent vs. 48 percent when the above two issues are combined, it appears other issues may play a relatively greater role in cases where the disqualifications are multiple rather than single.

A more detailed analysis of the data, including a narrative summary of all multiple disqualifications where at least one of the disqualifying issues was on an able and available issue reveals that for females the "other" major able and available issues are child care problems, unreasonable restrictions as to hours and/or shift, unwillingness to accept full-time work, and pregnancy. For males, the major issues are attendance at school, failure to register with or report to unions where a B-1 seek work plan has been assigned, and temporary transportation problems. These able and available disqualifying issues account for one-third of all the multiple disqualifications where at least one of the issues is an able and available issue.

### *The Voluntary Quit as a Catalyst*

Voluntary quits without good cause are involved in more than one-half of the multiple disqualifications and in the vast majority of those multiple disqualifications which are simultaneous. However, voluntary quits are of two kinds: *Without* good cause and *with* good cause. The voluntary quits *without* good cause will be discussed first.



As the able and available disqualification arises with far greater frequency in simultaneous combination with a voluntary quit without good cause disqualification than with any other disqualification, this implies it is the voluntary quit disqualification which brings to light the able and available issue. This finding is strengthened considerably by the fact that when the able and available disqualification is time separated from the voluntary quit without good cause or from either another "hard" or "soft" disqualification, the number of such disqualifications is the same; i.e., it makes no difference whether the second issue is a "hard" or a "soft" issue. What is more significant, the total number of such disqualifications is small.

#### *Voluntary Quits: The "without good clause" Provision*

Clearly, simultaneous multiple disqualifications can occur only in those voluntary quit cases where the determination is that good cause did not exist for the voluntary quit.

The department standards and the Appeals Board decisions as to what constitutes a voluntary quit without good cause are detailed and complex. For these purposes it is sufficient to observe that the general principle is that the voluntary quit is without good cause if the reason for the voluntary quit is not compelling. Once it is established that the reason for the voluntary quit was not compelling and therefore was without good cause, a second set of issues automatically is raised.

#### *Domestic Reasons and Other Reasons*

Reasons for voluntarily leaving the last employment fall into two categories. The special category is domestic reasons and these are set forth in Section 1264 of the Unemployment Insurance Code:

"Notwithstanding any other provision of this division, an employee who leaves his or her employment to be married or to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to such employment or whose marital or domestic duties cause him or her to resign from his or her employment shall not be eligible . . ."

The other reasons, by definition, are all those reasons which do not fall within the definition of domestic reasons.

#### *Simultaneous Voluntary Quits Without Good Cause and a Voluntary Leaving for Domestic Reasons*

To illustrate the interrelationships, it might be helpful to report on an actual case which involved both the domestic reason and the other reason.

This claimant voluntarily quit her job as a store manager because her husband did not want her to work nights, or on Saturdays or Sundays. Since she voluntarily quit her job for a reason that the department did not consider to be compelling, the voluntary quit was held to be *without* good cause. Furthermore, the reason for her voluntary quit was deemed to be a domestic reason, one falling within the purview of Section 1264, probably on the basis of the language ". . . whose marital or domestic duties cause him or her to resign from his or her employment . . ." Therefore, the claimant was simultaneously disqualified on a voluntary leaving for domestic reasons issue.

### *Simultaneous Voluntary Quits Without Good Cause and an Able and Available Disqualification*

If the above example is modified only slightly, it can be used to illustrate a voluntary quit *without* good cause and a simultaneous disqualification on an able and available issue. Assume this claimant was unmarried and that she voluntarily quit her job because she wanted only part-time work, for example, no more than 32 hours per week, no Saturday or Sunday work and no evening work. These would be considered unreasonable restrictions for a person whose normal occupation is that of a store manager. Therefore, the reason for her voluntary quit would have been found to be not compelling and *without* good cause. In addition, she would have been found to be unavailable for work because of her unreasonable restrictions upon the total number of hours per week she was willing to work and because she refused to work any evenings or on Saturday or Sunday.

### *The Primacy of the Voluntary Quit Without Good Cause*

From the foregoing examples it can be seen that it was the voluntary quit that brought to light both the voluntary leaving for domestic reasons issue and the availability issue. The department had before it the record of the claimant's past behavior which resulted in her being unemployed. The two questions remaining to be answered were: is the voluntary quit *with* good cause or *without* good cause and does the reason for the voluntary quit reveal a circumstance, attitude, or intent that indicates the claimant is either not able to work or not available for work?

### *The "with good cause" Provision*

The voluntary quit with good cause should be an important aid to the department in detecting potential domestic leaving disqualifications and potential able and available issues. On the basis of a careful review of 153 cases, there appear to be some instances where the voluntary quit with good cause raised domestic leaving and/or able and available issues which, to the extent that the record was complete, were not considered.

Where a claimant has a compelling reason for voluntarily quitting; for example, the woman who must quit her job to care for her ill child, ordinarily, she will be found to have quit *with* good cause, but in all probability she will be disqualified under the domestic leaving provisions of the code, Section 1264. Also, the department reasonably could be expected to satisfy itself that satisfactory child care arrangements will be provided once the child has recovered. If such is not the case, a question should be raised regarding the claimant's being able and available.

### *The Realities of Able and Available Disqualifications*

Where the able and available disqualification is assessed simultaneously with the "hard" disqualification—ordinarily a voluntary quit without good cause disqualification—it is virtually impossible for the penalty for not being able or available for work to have any real significance. It will be recalled that the penalty is denial of benefits,

either for a specified period of time or for a period of time lasting as long as the disqualifying circumstance is in existence. On the other hand, the "hard" disqualification carries a requirement that the disqualified claimant must become reemployed and earn a specified amount of wages before he can "purge" himself of the "hard" disqualification. The fact that a claimant does manage to purge appears to be taken by the department as *prima facie* evidence that he is able to work and is available for work. Therefore, for all practical purposes, the denial of benefits under the able and available disqualification has no impact.

What are the factual situations with regard to able and available disqualifications? Appended narrative summaries illustrate several different kinds of able and available disqualifications and show the transitory nature of most of the factual situations. These summaries seem to suggest that a strong presumption exists in the unemployment insurance system that any claimant having a valid claim is able and available and that the exceptions to this presumption are generally of little consequence and are easily overcome. (See Appendix C.)

### CHARACTERISTICS OF CLAIMANTS

Implicit in any earnings test as a requirement for drawing unemployment insurance benefits is the assumption that the individual is "part of" or "attached to" the labor force. One alternate assumption can be made from the presence of the earnings test, and that is that the test establishes ability, readiness and willingness to seek work—availability—rather than "membership" in the labor force. The merits of these alternate assumptions are not to be treated here, but the characteristics of the claimants, with respect to duration of claims, types of disqualifications, amount of earnings, reveal relationships which are of pertinence to this study.

Data in Tables 5 through 13 relate to earnings, duration of benefits, types of disqualifications, and determinations and are taken from a 1-percent sample of claimants whose benefit years (either through exhaustion of benefits or calendar termination—"BX" or "BYE") ended during the period October 1, 1967, through September 30, 1968.

Principal analytic tool with respect to earnings of claimants is the ratio of wages in the highest quarter of the base period to total base period wages. A ratio of 100 percent indicates the claimant had all his earnings during the year in a three-month period. A ratio from 25 percent to 33 percent suggests the claimant had earnings rather evenly distributed during the four quarters. It can be implied, therefore, that the higher the ratio, the more unevenly distributed or "lumpy" becomes the earnings pattern. The implications for availability may be clearer if one considers a ratio of, say, 60 percent. Assume an individual earned \$6,000 per annum. In that case \$3,600 was earned in one quarter ( $\$3,600/\$6,000 = 60$  percent) and a total of \$2,400 was earned in the remaining quarters. However, the remaining \$2,400 could have been earned in one quarter, which would add to only two quarters, or six months' employment for the individual. In fact, this may be the most valid assumption, given earnings of approximately \$1,200 per month in the high quarter. To assume the re-

maining \$2,400 was earned evenly over the remaining nine months, implies a monthly rate of \$266, rather unrealistic for a person previously earning \$1,200.\* This logic reinforces the generalization that the higher the ratio of high quarter to annual earnings, the more unevenly distributed are the wages.

These earnings data are the earnings of the claimant for four calendar quarters, his base period, which of course is *prior* to the benefit year. Earnings data are not those of the year in which benefits are drawn. All other data pertain to the current benefit year.

### *Stability of Earnings and Duration of Benefits*

In Table 5, the attempt has been made to relate earnings stability to the ratio of the actual duration of the claim to potential duration. Thus, a claimant drawing 13 weeks of benefits, where 26 weeks are authorized, is recorded as 50 percent vertically. Where the potential benefit period is less than 26 weeks, the base remains as 100 percent; actual benefits of six weeks to a potential benefit period of 12 weeks, is likewise recorded as 50 percent.†

TABLE 5 \*  
AWARD DURATION RATIO TO EARNINGS STABILITY (BY SEX)

Actual duration as percent of authorized	High quarter earnings as a percent of total wages (1967)**		
	25-33%	34-49.9%	50-100%
Males: N = 5444			
0-9.9%-----	40.0	26.6	23.2
10-89.9%-----	48.4	53.0	26.8
90-100%-----	11.6	20.4	40.0
	100.0%	100.0%	100.0%
Females: N = 2865			
0-9.9%-----	37.2	24.9	21.4
10-89.9%-----	42.7	49.5	25.0
90-100%-----	20.1	25.6	53.6
	100.0%	100.0%	100.0%

\* See Appendix D for absolute numbers.

\*\* Unfortunately, seasonality versus intermittency of employment is not clearly distinguishable by this tool. Likewise, earnings are not logically divisible by calendar quarters. Were monthly data available, they would have been used.

### *Stability of Earnings and Earnings Amounts*

Table 6 reveals rather striking differences in earnings patterns of males and females in the samples. (Raw data for this table are included in Appendix D.) About 9.1 percent of the males earned less than \$1,500 in the base period wages, while 27.8 percent of females earned less than \$1,500. Thus, in terms of a minimum wage of \$1.60

† The maximum benefit award becomes limited where earnings are insufficient. For example, a claimant who earns only \$180 in each quarter of his base period is eligible for a \$25 weekly benefit. This is the minimum earnings requirement and the minimum benefit. Such claimant can draw only 50 percent of the earnings, or \$360. At \$25 per week, the claimant's potential duration is 14.4 weeks. A claimant's maximum benefit award is the lesser of 26 times his weekly benefit amount or one-half his base period wages.



per hour and a 40-hour week, these claimants worked less than 940 hours annually, which is less than 24 weeks.

Among males, those with low earnings are heavily concentrated in the lumpy earnings category, over 50 percent to 100 percent (the ratio of high quarter to total earnings.) About 21.4 percent of all claimants have earnings in a six-month period or less; of these, the bulk earn less than \$3,000. More than one-third of these claimants earned less than \$1,500. Without any question, the data reveal that low earnings are characterized by seasonality or instability of earnings, rather than intermittency of earnings among low wage earners. No other interpretation of the less than \$3,000 categories is possible.

Both males and females have about the same patterns of earnings. About 45.5 percent of males have steady earnings, while about 41.1 percent of the females do. The patterns for females are similar in other respects, although the earnings categories are smaller. Under \$1,000 wage earners comprise 9.6 percent of females, the bulk of whom are concentrated in the lumpy wage earner (50-100 percent) category. Although not presented in Table 6, 72.6 percent of the females earning less than \$1,500 accumulate their base period wages in less than six months. This amounts to slightly more than 20 percent of all female claimants. There is thus some bias in the data, in that

TABLE 6  
TOTAL EARNINGS IN BASE YEAR TO EARNINGS STABILITY (BY SEX)

Total earnings in base year	Percent of total	High quarter earnings as a percent of total wages (1967)		
		25-33%	34-49%	50-100%
Males: N = 5444				
Less than \$1,500--	9.1	.2	4.6	34.7
1,500-2,999-----	16.4	2.1	20.3	45.7
3,000-8,999-----	60.3	72.2	62.7	19.6
9,000-9,999-----	5.1	9.5	2.4	.0
10,000 and over---	9.1	16.2	5.4	.0
	(100%)	100.0% (45.5%)	100.0% (33.1%)	100.0% (21.4%)
Females: N = 2864				
Less than \$1,000--	9.6	.3	4.5	28.5
1,000-1,499-----	18.2	2.0	17.5	42.5
1,500-2,999-----	33.8	22.4	55.3	27.5
3,000-5,999-----	34.3	66.7	21.4	1.4
6,000 and over---	4.1	8.6	1.3	.1
	(100%)	100.0% (41.1%)	100.0% (30.4%)	100.0% (28.5%)

two claimants, drawing a differing number of weeks of benefits, are recorded as equals. Despite this technical limitation, which is not believed to be significant, the data reveal that, the more uneven the claimants' earnings in the base period, the greater the proportion of benefits drawn in the benefit year. For example, among females with evenly distributed earnings in the base period (25 percent to 33 percent), 62.8 percent drew 10 percent or more of their benefits, while 20.1 exhausted or practically exhausted their benefits. Exhaustees or

near exhaustees increased from 20.1 percent in the evenly distributed group to 53.6 percent in the more uneven earnings category. The patterns hold true in the various classifications, and is believed to be statistically significant. Appendix D has absolute numbers and more discrete categories.

Among males, the same pattern is revealed. Of those males in the evenly distributed earnings category, 11.6 percent exhausted, whereas 20.4 percent and 40.0 percent of the more unevenly distributed earnings categories exhausted or nearly exhausted. Distinguishing those drawing more than 50 percent of their benefits from those drawing less than 50 percent reveals a similar pattern.

From these data, some generalizations can be made. One is that the more stable the earnings pattern, the sooner the claimant returns to work (assuming the discontinuance of benefits means returning to work). Second, the more unstable the earnings pattern in the past, the more likely it will be that the claimant will draw proportionately more benefits in the current period. Third, there is strong support for the "labor force attachment" assumption of the earnings requirement in the sense that greater duration of benefits currently is a surrogate for uneven earnings currently. Thus what appears to be the earnings pattern in the past continues to be the earnings pattern.

One rebuttal to this generalization is that it is obvious that those who found it difficult to secure steady employment previously will continue to find it difficult currently. Further, there is no suggestion of unavailability. But to this, one must note that there is no necessary assumption of availability, even though the ethic of wanting to work is accepted. A considerable proportion of the labor force prefers limited employment, notwithstanding ability to seek and secure full-time employment.

### *Stability of Earnings and Disqualifications*

Earnings stability is compared with types of disqualifications in Table 7. Disqualification data in this table are not directly comparable to those in the previous sections relating to disqualifications. These data were furnished by the Department of Employment, which compiles disqualifications on the basis of the most "serious," hence their lack of direct comparability.\* Previously noted, however, has been the high linkage between the past behavior (voluntary quit, misconduct, and domestic leaving) type disqualification and the current behavior (able and available) disqualification. In this table, the AA issues tend to be understated, since they are unrecorded if simultaneous with past behavior disqualifications.

These earnings stability and disqualifications data do not develop substantively the thesis that disqualifications tend to be incurred by those whose earning patterns in the past have been irregular. Female claimants exhibit a mixed pattern of disqualifications as percentages

\* The DE compiles disqualifications data on the basis of only one issue according to the ranking priority of (1) voluntary quits, (2) misconducts, (3) domestic leavings, (4) efforts to seek work, (5) able and available, (6) other, and prior year disqualifications. Thus, where a claimant incurs multiple (simultaneous) disqualifications, it is recorded by the ranking noted. The result understates the lower ranked disqualifications where multiple simultaneous disqualifications exist.

of claimants in each category. Generally, disqualifications as a percentage of claimants in each category are slightly less, the more lumpy the wages. For males, the ESW/AA issues are greater in the unstable earnings category, as are all other types of disqualifications, the reverse of the female case. Adding subsequent disqualifications does not alter the patterns.

TABLE 7  
TYPE OF FIRST DISQUALIFICATION IN CURRENT BENEFIT YEAR  
TO EARNINGS STABILITY (BY SEX)

Type of disqualification	High quarter earnings as a percent of total wages (1967)			
	UNK*	25-33%	34-49%	50-100%
<b>Males</b>				
VQ/MIS.....	5.6	12.7	8.7	11.0
ESW/AA.....	3.8	4.3	5.3	5.5
All other.....	4.0	4.3	4.8	4.9
None.....	86.6	78.7	81.2	78.6
	100.0%	100.0%	100.0%	100.0%
<b>Females</b>				
VQ/MIS.....	--	14.5	9.0	10.3
Domestic leaving.....	--	4.1	2.0	2.5
ESW/AA.....	--	10.7	10.1	9.1
All other.....	--	8.0	5.2	3.3
None.....	--	62.7	73.7	74.8
	--	100.0%	100.0%	100.0%

\* High quarter earnings more than \$2,500, distribution unknown.

### Earnings Amounts and Types of Disqualifications

Table 7 compared the earnings stability with the type of first disqualifications of claimants. In Table 8, earnings amounts are compared with the type of first disqualification. As in previous tables, AA and ESW data are probably understated by the method of data gathering. Even so, certain distinctions among claimants can be noted. Among males, while 8.2 percent of those having no disqualifications earned less than \$1,500 in their base period, 12.9 percent of those having AA and ESW disqualifications earned less than \$1,500. The \$1,500-\$2,999 category is more pronounced. 15.4 percent of those having no disqualifications earned from \$1,500 to \$2,999 in their base period, but 24.5 percent of those having AA and ESW disqualifications earned this amount. The suggestion: the lower income groups tend to have more AA and ESW disqualifications. Above \$3,000, the relationships reverse themselves for males.

For females, no discernable trend is apparent from the data. There are slightly more AA and ESW disqualifications among those earning less than \$1,500 in their base period. Note, however, that only 70.6% of females have no disqualifications, compared to 80.1 percent of males. Also, female claimants have, proportionately, more than twice as many AA and ESW disqualifications as males, even with these data which tend to understate the respective roles. Beyond that, the data show that disqualifications occur among females proportionate to income,

That is, the level of income for females does not appear to be associated with the rate or type of disqualification. This would seem to be a peculiar result, if the assumption of less availability is made for those in the low income categories. It suggests either the assumption is an incorrect one, or that the DE is not as successful at the detection of disqualifying issues at the lower income levels as it is at the higher.

**TABLE 8**  
**TOTAL EARNINGS IN BASE YEAR TO TYPE OF FIRST DISQUALIFICATION**  
**(BY SEX) IN PERCENTAGES**

Total earnings base year	Type of first disqualification				Other
	None	VQ/MIS	DOM	AA/ESW	
Males: N = 5446-----	(80.1%)	(10.5%)		(4.9%)	(4.7%)
Less than \$1,500-----	8.2	12.9	NA	12.0	12.6
1,500-2,999-----	15.4	19.9	NA	24.5	19.8
3,000-6,999-----	44.3	48.4	NA	41.0	45.7
7,000 and over-----	32.2	18.7		22.3	21.9
	100.0%	100.0%		100.0%	100.0%
Females: N = 2865-----	(70.6%)	(11.6%)	(3.0%)	(10.1%)	(4.8%)
Less than \$1,500-----	28.7	27.1	17.6	30.2	16.7
1,500-2,999-----	34.6	26.5	31.7	33.3	41.3
3,000-4,999-----	26.4	35.8	40.0	26.4	27.5
5,000 and over-----	10.3	10.6	10.7	10.1	14.5
	100.0%	100.0%	100.0%	100.0%	100.0%

### *Stability of Earnings and Nonmonetary Determinations*

Table 9 compares earnings stability with nonmonetary determinations of claimants. These are determinations—not disqualifications. They concern issues for which a disqualification would have resulted, had the claimant been determined to be unavailable. They are distinguished from monetary determinations, which if found disqualifying, would require the claimant to become reemployed and (usually) earn five times his weekly benefit amount as a condition precedent to being entitled to receive benefits. Nonmonetary determinations thus concern issues for which the penalty is forfeiture of benefits for a time period.

The significance of the nondisqualifying determination is that it represents a circumstance which the DE believes to be sufficient to warrant investigation of possible unavailability. (Claimant investigation follows by personal interview.) The frequency of the determinations, classified by earnings stability is therefore indicative of the economic patterns of those about whom availability questions are most often raised, albeit unsuccessfully in terms of disqualification. Of course, a determination not resulting in a disqualification suggests the claimant is adjudged "innocent." Still, the local offices do not raise issues with the claimant unless they believe there is serious cause to question the availability of the claimant. Finding otherwise, there is



the residual fact that claimants with particular earnings patterns tend to have more questions of availability raised.

In Table 9, among females, those having no determinations decreases as earnings become more stable.

Among males, almost the reverse is true. Those with unstable earnings have somewhat more determinations than those with stable earnings. From the table, one can generalize that the number of determinations is somewhat associated with earnings stability for males, but

TABLE 9  
NONMONETARY DETERMINATIONS TO EARNINGS STABILITY (BY SEX)

Number of nonmonetary determinations	High quarter earnings as percent of total wages			
	UNK*	25-33%	34-49%	50-100%
Males: N = 5446-----	(9.1%)	(38.1%)	(31.3%)	(21.4%)
None-----	71.3	62.4	62.1	56.9
One-----	20.5	23.1	21.9	26.9
Two or more-----	8.2	14.5	16.0	16.2
	100.0%	100.0%	100.0%	100.0%
Females: N = 2865-----	(0.2%)	(41.0%)	(30.4%)	(28.4%)
None-----	--	38.7	50.5	64.7
One-----	--	33.7	29.6	28.3
Two or more-----	--	27.6	19.9	7.0
	--	100.0%	100.0%	100.0%

\* High quarter earnings more than \$2,500, distribution unknown.

for females, the steadier the earnings pattern (which could indicate intermittency and low earnings levels) the greater the probability of determinations. The difference between the 25-33 percent category and the 50-100 percent category is significant for females. This implies that those with highly concentrated earnings are less often subject to determinations, either because they raise few availability issues, or because they are not interrogated. Such claimants may not be interrogated because they are not required to seek work on their own behalf and thus are less subject to determinations.

#### *Duration of Benefits and Type of Disqualification*

Table 10 compares duration of benefits, stated as the ratio of actual weeks drawn to potential maximum, with type of *first* disqualification. The latter is recorded on the basis of the ranking noted in the previous section on disqualifications. Duration of benefits is recorded on the basis of all benefits drawn during the year, ignoring whether the benefits drawn are consecutive weeks or interrupted (by employment or other reason for nonreceipt). These two aspects are compared under the premise that together they might reveal those durations at which disqualifications are noted, by types, and thus the efficacy of the disqualification mechanisms at particular durations.

Not surprisingly, Table 10 for both males and females reveals that those disqualified for voluntary quit and misconduct tend to have zero

duration or short durations of less than 9.9 percent meaning no benefits are drawn, or only a small proportion of the benefit award is drawn. For females, those exhausting or nearly exhausting benefits without disqualifications are proportionate to those with AA and ESW disqualifications.

Unfortunately, no evidence of the effect of the PER emerges from the data in Table 10. One might expect that there would be proportionately more disqualifications arising at those duration points where the PER's occur.\* This seems plausible, since at these points, inquiry into the claimant's job specifications and seek-work pattern is made somewhat more intensively than it is during the weekly certification for benefits. The basis for calculating duration data, however, may have clouded the relationship, since consecutive weeks of benefits per claimant are comingled with intermittent receipt of benefits. In the latter case, a claimant could draw all his benefits without a PER, since

TABLE 10  
AWARD DURATION RATIO TO TYPE OF FIRST DISQUALIFICATION (BY SEX)

Duration Actual/Potential	Type of first disqualification				All other
	None	VQ/MIS	DOM	ESW/AA	
Males-----	(80.1%)	(10.5%)		(4.9%)	(4.5%)
0-9.9%-----	27.8	66.6	NA	24.2	34.0
10-89.9%-----	50.1	26.5	NA	51.6	49.0
90-100%-----	22.1	6.9	NA	24.2	17.0
	100.0%	100.0%		100.0%	100.0%
Females-----	(70.6%)	(11.6%)	(3.0%)	(10.1%)	(4.8%)
0-9.9%-----	20.1	74.7	76.4	26.7	22.5
10-89.9%-----	43.5	18.7	13.0	41.8	49.2
90-100%-----	36.4	6.6	10.6	31.5	28.3
	100.0%	100.0%	100.0%	100.0%	100.0%

at no time would he necessarily have had to draw five weeks of benefits consecutively.

#### *Earnings Amounts and Duration of Benefits*

Table 11 expresses an obvious unemployment relationship: The opportunity costs of unemployment are high for those accustomed to higher incomes. Duration of benefits and earnings of claimants are compared in Table 11. For males, duration is inversely related to earnings in previous years. Significantly, about 37.3 percent of those earning less than \$1,500 in their base year exhausted or nearly exhausted their benefits, while only 11.0 percent of those earning above \$6,000 did likewise. In other words, the exhaustion rate for those below \$1,500 is almost 3.5 that of those above \$6,000. The probability of exhaustion or near exhaustion of benefits is associated with the earnings level in the base period.

\* PER's normally occur at 5, 10, 15, 20 and 25 weeks for claimants obliged to seek work on their own behalf. Assuming all claimants are eligible for 26 weeks and draw benefits uninterrupted, the ratios would be in the 10.0-19.9, 30.0-39.9, 50.0-59.9, etc., categories.

For female workers, the same conclusions follow, although the difference in exhaustion rates between low and high income earners is not as great.

TABLE 11  
TOTAL EARNINGS IN BASE YEAR TO AWARD DURATION RATIO (BY SEX)

Earnings	Award duration ratio			
	0-9.9%	10-49.9%	50-89.9%	90-100%
Males: N = 5444-----	(35.5%)	(24.7%)	(18.6%)	(21.2%)
Under \$1,500 (100%)-----	7.8 (30.6)	6.4 (17.4)	7.1 (14.6)	15.9 (37.3)
1,500-2,999 (100%)-----	12.8 (27.6)	15.9 (23.8)	13.1 (14.9)	26.2 (33.7)
3,000-5,999 (100%)-----	24.9 (27.1)	40.1 (30.4)	37.2 (21.3)	32.5 (21.2)
6,000 and up (100%)-----	54.5 (39.2)	37.6 (18.8)	42.6 (31.0)	25.4 (11.0)
	100.0%	100.0%	100.0%	100.0%
Females: N = 2865-----	(28.9%)	(24.1%)	(15.8%)	(31.4%)
Under \$1,000 (100%)-----	7.7 (23.3)	4.8 (11.9)	6.9 (11.3)	16.4 (53.5)
1,000-1,499 (100%)-----	13.5 (21.5)	13.5 (18.1)	17.9 (15.5)	26.0 (44.9)
1,500-2,999 (100%)-----	32.5 (27.8)	36.2 (25.8)	37.6 (17.5)	31.1 (28.9)
3,000 and up (100%)-----	46.3 (46.7)	45.5 (16.2)	37.6 (15.5)	26.5 (21.6)
	100.0%	100.0%	100.0%	100.0%

### *Nonmonetary Determinations and Duration of Benefits*

The scheduling of a determination with a claimant may or may not alter his seekwork pattern. There are a number of grounds for believing that the scheduling improves the seekwork pattern; the claimant may believe his claim is coming into question, and thus may increase his efforts to seek work. On the other hand, claimants may view the scheduling of a determination as simply another bureaucratic procedure, with little significance. (The ratio of disqualifications to determinations averages about 18.2 percent for refusals of suitable employment, 25.8 percent for failure to seek work, and 40.7 percent for non-availability for work, in 1967.)\*

Comparing the nonmonetary determinations with duration of benefits, as is done in Table 12, reveals that generally, as duration increases, chances are there will be determinations made for various issues. Those with two or more determinations are associated with the longer durations. Females seem to attract more determinations. About 46.4 percent of females have no determinations, compared to 70.0 percent for males. One might have expected this, since questions of attachment to the labor force are more prominent for females. Those with two or more determinations have the same patterns, 6.7 percent for males and 22.7 percent for females. Administratively, then, one can conclude that females are much more costly than males.

Exhaustees and near exhaustees, both male and female, are not as subject to determinations as one might imagine. Almost one-half (49.2 percent) of female exhaustees have no determinations; more than one-half (55.4 percent) of male exhaustees and near exhaustees have no determinations.

\* Claimants involved in Eligibility and Disqualification Determinations, Selected Issues, 1967, Department of Employment, Research and Statistics, Report 525.

TABLE 12  
AWARD DURATION RATIO TO NUMBER OF NONMONETARY  
DETERMINATIONS (BY SEX)

Duration Actual/Potential	Number of nonmonetary determinations		
	None	One	Two or more
<b>Males: N = 5444</b>	(79.9%)	(23.3%)	(6.7%)
0-0-0 (100%)	33.7 (65.4)	33.7 (24.6)	21.0 (10.0)
10-80-0 (100%)	48.1 (62.5)	46.2 (22.6)	51.3 (14.0)
90-100 (100%)	18.2 (55.4)	22.1 (25.3)	26.8 (19.3)
	100.0%	100.0%	100.0%
<b>Females: N = 2865</b>	(46.4%)	(30.9%)	(22.7%)
0-0-0 (100%)	26.0 (41.7)	40.3 (43.0)	19.5 (15.3)
10-80-0 (100%)	40.8 (47.6)	34.0 (26.4)	45.3 (26.0)
90-100 (100%)	33.2 (49.2)	25.7 (25.3)	35.2 (25.5)
	100.0%	100.0%	100.0%

It is not at all obvious from the data whether the department is successful in raising determinations questions about availability at particular points. No discernible effect of the five-week PIER can be seen as duration increases.

Tabulating nonmonetary determinations by duration has as its implied logic that there is a relationship between the two. The policy of the department is to raise issues for determination where the issue looks "genuine." In other words, the administrative costs and the practicalities of the DE and claimant relationships are such that issues are not randomly raised. There is no assumption that, say, 50 percent of determinations will result in disqualifications. As noted, disqualification ratios are low for selected issues. It seems, however, that the raising of an issue, even if it does not result in disqualification, acts to shorten the duration of a claim. For females without determinations, 26 percent drew less than 10 percent of their benefits. In contrast, among those females who had one determination, 40.3 percent drew less than 10 percent of their benefits. The implication: a determination, even if not disqualifying, is capable of altering the propensity of the claimant to seek and accept suitable employment. These data, of course, do not reflect disqualifying determinations which may have been assessed along with the nondisqualifying determinations. Data for males do not suggest this pattern. Those having one determination seem to have about the same durations as those with none. In the two or more determinations category, slightly less have drawn 10 percent of their benefits, but this may be due to factors unrelated to determinations.

#### *Nonmonetary Determinations and Amount of Earnings*

Tables 12 and 13 are related. Table 13 classifies the nonmonetary determinations by amount of annual earnings of the claimants in the previous year. From Table 13, nonmonetary determinations for females are proportionate to the number of women regardless of income. The number of women without nonmonetary determinations is about 50 percent in each of the lower income brackets, but drops to 39.1 percent



in the \$3,000+ category. One might expect to find proportionately more determinations at lower income levels than at the higher levels, given the presumption of less attachment. The data do not reflect disqualifications, which were previously indicated in Table 7. However, there proportionality of disqualifications was also observed. Of course, the data may reflect that the department is not as successful in identifying situations wherein determinations are necessary at the lower income levels.

For males over the \$6,000 earnings level, 70.9 percent of claimants have no determinations; for the under-\$3,000 groups, the determinations rate ranges from 59 to 49.5 percent. Thus, in comparison to the numbers in each earnings category, the lower the income, the more likely the determinations. The department, while it seems to raise more questions with women than men, is able to disqualify proportionately more men than women on ESW and AA bases (per Table 8). For males, it is interesting to note that there are more than twice as many determinations below \$3,000 as there are above \$6,000. This relationship does not hold for females.

TABLE 13  
TOTAL EARNINGS IN BASE YEAR TO NUMBER OF NONMONETARY  
DETERMINATIONS (BY SEX)

Total earnings base year	Number of nonmonetary determinations		
	None	One	Two and more
<b>Males: N = 5444</b> -----	(70.0%)	(23.3%)	(6.7%)
Less than \$1,500-----	7.2 (49.5)	11.4 (29.4)	12.9 (21.1)
1,500-2,999-----	13.8 (52.0)	19.9 (23.1)	22.3 (19.9)
3,000-5,999-----	30.9 (59.0)	33.5 (24.0)	37.5 (17.0)
6,000 and up-----	48.1 (70.9)	35.2 (19.5)	27.3 (9.6)
	100.0%	100.0%	100.0%
<b>Females: N = 2865</b> -----	(46.4%)	(30.9%)	(22.7%)
Under \$1,000-----	10.6 (50.9)	8.9 (23.7)	8.6 (20.4)
1,000-1,499-----	19.9 (50.5)	17.6 (29.9)	15.7 (19.6)
1,500-2,999-----	37.4 (51.0)	32.1 (29.3)	29.2 (19.7)
3,000 and up-----	32.6 (39.1)	41.4 (41.3)	46.5 (19.6)
	100.0%	100.0%	100.0%

#### Summary: Earnings, Duration and Disqualifications

Assimilating a mass of statistical data such as the previous, pertaining to earnings, duration, and disqualifications is difficult; however, only through such presentation can the various nuances of interpretations be made. Generally, the pattern of data seems to summarize as follows:

1. The longer the duration of the claim, the more likely the claimant has had wages which were highly concentrated in the base period.
2. Those with low earnings in their base period generally had earnings concentrated in their base period.

3. Neither males nor females with highly concentrated earnings are disqualified more frequently than those in other earnings categories.
4. Disqualifications in the current benefit year are somewhat related to income amount in the base period among males; the lower the income, the more frequent the disqualifications. Among females, however, this relationship does not hold.
5. Those having determinations are more frequently males with unstable earnings and low incomes. Females with stable (and low) earnings have more determinations than those with unstable earnings.
6. Disqualifications seem to increase proportionately as duration increases.
7. Finally, the lower the earnings of the claimant, the longer tends to be the duration of the claim.

From these patterns, a number of tentative propositions may be advanced. Duration of claims and amount of earnings patterns suggest, for example, that low-income groups should not have "usual" occupation as a basis for seek work and suitable work patterns. Clearly, such claimants had problems finding employment in the past, and from the duration of their claims in the current benefit year, seem to have problems currently. To encourage such claimants to seek work in terms of their usual occupations seems fruitless; all efforts should be made to expand their definitions of suitable work.

Much of the data also suggests that availability and other types of issues are most frequently raised in connection with lower income groups and in connection with those with unstable earnings patterns. This raises the question of the efficacy of the primary screen in unemployment insurance, the ability of the earnings test to screen out those who will be conditionally eligible to receive unemployment insurance benefits. Whether such screen is an assumption of "attachment" or evidence that the individual is willing to seek and accept employment is irrelevant. On both counts, given the characteristics, questions can be raised. If genuineness of availability were present, the data would not be skewed toward the low income and unstable earnings groups. The earnings tests for eligibility are so low, however, that there is no assurance that the assumption of the primary screen, however stated, is valid. Already noted has been the effect of the \$720 requirement: at a minimum wage of \$1.60 per hour, it takes only 450 hours to become eligible for a \$25 weekly benefit for 14.4 weeks—a minimum benefit award of \$360. It would seem that those with such limited earnings cannot be regarded as normally employed. The normal status of such individuals, in fact, is unemployment. Expressed in hours, assuming 2,000 as hours of work per year, the individual earning a minimum wage sufficient for minimum benefits, is only  $450/2,000$  or 22.5 percent employed. At anything above the minimum wage, the ratio drops. The unemployment insurance system is not designed or anticipated to accommodate those with 70–80 percent unemployment status.

It is, of course, questionable whether the present monetary eligibility requirement to establish a valid claim is within the purview of ACR

129. However, the very strong link between the primary screen and the secondary screen cannot be denied, nor can the intuitive logic of the role of the primary screen. Finally, the ease with which claimants can qualify for benefits should be noted. Generally, it seems obvious that a much higher proportion of issues and disqualifications would be substantive if the monetary eligibility requirements were raised, say to \$1,500.

Appendix C provides ample indication of the extent to which claimants engage in activities other than seeking work or seek work only under conditions which accommodate personal circumstances. These activities and roles in many cases are mutually acceptable to them, and thus compromise availability. The fact that other roles or activities are highly acceptable to them suggests less positive attitudes on their part with respect to seeking and accepting employment than perhaps is anticipated in the Unemployment Insurance Code. The impact of wage loss to these individuals must be less than it is for claimants whose availability is full time. If unemployment insurance is anticipated as paying benefits for wage loss, then it is important to have a primary screen which is sufficient to screen out those whose wage loss cannot be regarded as significant.

At a \$1,500 level, a claimant at a minimum wage would qualify for benefits in approximately six months. Unfortunately, a monetary eligibility requirement is inverse to the length of employment as higher wage levels are applied. This is, of course, the major flaw of a monetary vis-à-vis weeks-work test of eligibility.





## SECTION III

### INTRODUCTION: B-1 SEEK-WORK PLANS

The Unemployment Insurance Code sets forth a general seek work requirement in Section 100 of the code as follows: "It is the intent of the Legislature that unemployed persons claiming unemployment insurance benefits shall be required to make all reasonable effort to secure employment on their own behalf." The code further provides in Section 1253(e) that

"An unemployed individual is eligible to receive unemployment compensation with respect to any week only if the director finds that:

(e) He conducted a search for suitable work in accordance with specific and reasonable instructions of a public employment office."

The effect of Section 1253(e) is to give to the director the authority to establish procedures to be followed by a claimant in seeking work as one of the conditions of his being eligible to receive unemployment compensation benefits.

Although the department has developed three types of seek-work plans, it is the B-1 seek-work plan on which attention is focused in this section of the report. This type of seek-work plan is given to claimants who customarily obtain their jobs through union hiring halls exclusively, and where the union controls all or almost all hiring in the occupation, maintains its own hiring hall and prohibits members from seeking work on their own behalf. The department, based upon its investigations, determines whether a particular union in a particular area does in fact have these characteristics.

#### *Union Hiring Hall Goals*

From the standpoint of the union as a hiring hall, its major concerns are the successful implementation of two major goals: The union must maintain control over access to the available jobs in the occupation over which it claims jurisdiction. Second, the union must be reasonably able to provide qualified workers to fill the job vacancies of employers having labor contracts with the union. So long as the union is successful in implementing these two goals, its interests in the particular behavior of a particular unemployed worker must rest on foundations not necessarily relevant to these two major concerns.

#### *Union Hiring Hall Procedures*

The union hiring hall must have certain pieces of information and institute certain procedures if it is to function. They are:

1. A knowledge of the job vacancies which exist.
2. A means of registering unemployed members of the union.

3. Some system of ranking the registered unemployed union members for the purpose of establishing priority of opportunity to fill a vacancy.
4. Some system by which the unemployed members of the union can have knowledge of the existing job vacancies and can be referred to them.

Each of the above requirements may be met in any one of several different ways. Ordinarily, the union simply is notified of vacancies by those employers having a labor contract with the union. The information provided includes the number of vacancies, the locations of the jobs, whom to report to, and in some cases a brief description of the kind of job it is; for example, remodeling or new work, and sometimes information on the probable duration of the job.

The register or registers of the unemployed members of the union generally are simply lists of such union members. Periodically these lists are brought up to date. Multiple registers are used by some unions where the skill and/or experience levels are a prerequisite for performing certain kinds of work within a given occupation. In other cases, only one register is used, but the unemployed union member designates the kind or level of work he is willing to accept in that occupation. For example, a registrant may specify that he wants a foreman's job or specify some other particular limitation.

The ranking of the registered unemployed union members is on a rotational basis; that is, the member who has been unemployed the longest is at the head of the list, and the most recently unemployed is at the foot. However, as an internal matter, the unions have formulated certain rules which govern the conditions under which a member will lose his place on the register and be put at the bottom of it. For example, in the case of a carpenters' local, failure to be present at rolleall on Monday morning results in an individual's going to the bottom of the list. In the case of another union, an individual loses his place on his register if he refuses three referrals before again working. Also, if he is not present in the union hiring hall when there is a job referral for which he is eligible to apply, this counts as a refusal of a referral.

Thus, the right of a union member to refuse a particular referral without losing his place on a register is a matter entirely within the jurisdiction of the union. As an unemployment insurance claimant, the union member has met the initial seek-work requirement of the Department of Employment by registering for work with his union. His refusal of a referral does not constitute failure to comply with the union regulations. In fact, refusal of successive referrals does not raise union compliance issues. As far as his union is concerned, such refusals simply make him subject to the union rules as to the circumstances under which he will lose his place on his register.

When the claimant presents his weekly certification card for the week ending the prior Saturday to the Department of Employment, among the questions on the certification card he must have answered are the following two: "Was any work offered you that week?" and "Did any person in this office or anywhere else offer you a referral to a job that week?" Technically, a union member who refused a job

referral would be obliged to answer "yes" to the second of the foregoing questions. However, it is not at all clear that the claimant would have been obliged to answer "yes" to the first question, "Was any work offered you that week?"

At this point it is necessary to make a distinction between a job offer in the customary sense and the referral of an applicant for employment as it is manifest in the union hiring hall. Traditionally, an offer of a job is made to a specific individual only after one or more contacts between the employer and the applicant. Each has had an opportunity to make at least a cursory appraisal of what the other has to offer. The job offers received in the union hiring hall are not offers to particular individuals in the customary sense. They are notifications of vacancies to an organization which controls all, or almost all, of the supply of labor for a particular occupation in a particular geographical area and there is no implication the employer-employee relationship will be permanent. Furthermore, the employer has entered into a contractual agreement with the union that he will go to the union for this supply of labor. It is only when the union cannot supply the labor required that the employer is free to search elsewhere. Last, it should be pointed out that an essential characteristic of a bona fide job offer is that if the applicant elects to accept the offer, he becomes an employee. However, many labor contracts have a provision similar to the following, which is quoted from the Inside Wiremen's Agreement (1966) between Local Union No. 11, International Brotherhood of Electrical Workers of Los Angeles County, California, and Los Angeles Chapter, National Electrical Contractors Association. Sec. 3. . . . the parties hereto agree to the following system of referral of applicants for employment:

- (1) The Union shall be the sole and exclusive source of *referral of applicants for employment*.
- (2) The Employer shall have the right to reject any *applicant for employment*.

### *Areas of Potential Conflict*

#### *Referrals and Refusals*

In the strict sense, then, job orders placed by employers with the union are requests that the union refer applicants for employment to them; they are not bona fide offers of work to particular individuals. Such an interpretation may obscure the realities in the sense that the common experience is that the employer does employ the men dispatched to him by the union. The critical point raising a potential conflict, however, is whether the unemployed union member who elects not to be referred views this act as constituting a refusal of suitable employment. It seems reasonable to assume he would not. In point of fact, there could not be a refusal unless the unemployed worker had first gone out to the job and at that point refused an offer of employment by the employer. Two basic questions are whether the union, if registration with it is to satisfy the seek work requirements, must be required to apply the same standards to its members as would be applied by the department if it were aware of the refusal. The second question is whether an affirmative responsibility ought to be placed on

the union to notify the department of any refusal or avoidance of a referral. The union will supply such information to the department if asked. However, the evidence is that only rarely does the department make such inquiry of a union.

### *The "Commute" Standard*

A second point at which a potential conflict exists between the seek-work standards of the Department of Employment and the unemployed claimant with a B-1 seek-work plan is the size of the geographical area and the commute standard of the DE. A union's jurisdiction over work in the occupation which is subject to the labor contract is limited to a particular geographical area. As a practical matter, the union member of a given local union has his work opportunities in his occupation limited to that area, which may, or may not, be of a size consonant with the general standard of the Department of Employment. Although provision is made in many labor agreements for a union member to work outside the area over which his local union has jurisdiction in special circumstances, the intent of the labor contract is to give the members of the local union first opportunity to take the available jobs.

### *Suitability of Work*

A third point of conflict relates to the seek-work requirements and what kind of work is "suitable work." Section 1258 of the Unemployment Insurance Code states: "Suitable employment" means work in the individual's usual occupation or for which he is reasonably fitted, regardless of whether or not it is subject to this division.

"In determining whether the work is work for which the individual is reasonably fitted, the director shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence. Any work offered under such conditions is suitable if it gives to the individual wages at least equal to his weekly benefit amount for total unemployment. In any particular case in which the director finds it impracticable to apply one of the foregoing standards he may apply any standard which is reasonably calculated to determine what is suitable employment."

The exemption from the standards set forth in Section 1258, as contained in the last sentence of the section, is the basis for the B1 seek-work plan. The effect of the B-1 seek-work plan is to make the union a partial surrogate for the Department of Employment in connection with seeking work and suitable work. The department cannot exercise any effective control over the union in these regards, particularly so when the conditions under which the members of the union seek work are embodied in the labor contract between the union and the employers and in the procedural arrangements of the union.

The question of what kind of work constitutes "suitable work" within the context of a B-1 seek-work plan poses a problem different in nature from that of seek work. Given the increasing specialization



of work, particularly at the higher skill levels, it probably is unrealistic to assume that every member of a union is competent to perform every kind of job falling within the jurisdiction of the labor contract. As pointed out earlier, some contracts stipulate that a member must have a combination of a certain skill and experience level before he is entitled to have his name on a particular register. As is well known, such devices serve, among other purposes, that of giving favored treatment to the older union members. Regardless of the merits of the practice, it does tend to fragment and specialize the occupation and limits the scope of what may be considered as "suitable work" for any given union member.

A more serious aspect of the "suitable work" question arises when the unemployed union member can designate the particular kind of work he will accept. In this case, it is the worker who makes the judgment as to what kind of work is "suitable work," and in making this judgment he also determines the degree of probability that he will be referred for employment.

The "suitable work" issue as manifest in B-1 seek-work plans poses onerous problems. First, there is the question of what constitutes a referral and/or a refusal. Second, what constitutes "suitable work" is unilaterally determined by the worker and has major impact upon his success in "seeking work." Third, what constitutes the geographical area of the seek work patterns for union members potentially conflicts with the Department of Employment standards.



## SECTION IV

### INTRODUCTION: CALIFORNIA STATE RETRAINING BENEFITS

The California unemployment insurance system has undergone considerable modification since its origin, the Unemployment Reserves Act of 1935. Of particular interest in this section of the JIC Report is that modification relating to a relatively minor portion of the law, the payment of benefits to unemployed claimants who are in training or retraining status.

Prior to 1959, provisions in the Unemployment Insurance Law prohibited the payment of benefits to a claimant if he were not available for work. Thus, enrollment by an unemployed in a retraining program, whether approved by state agencies or not, would disqualify him from receiving unemployment insurance benefits. The grounds would be that such a claimant was not "able to work and available to work." (The claimant could, conceivably, indicate that he would discontinue the training if suitable work was offered and independently seek work. Under the provisions of the law, he would have been required, in addition, to pursue his training during hours when he normally would not have been working.) The "able and available" provisions of the unemployment insurance laws have been in existence since their inception in 1935. Such provisions, of course, have as their logic the exclusion from benefit status those individuals who are not actively seeking current employment attachment to the labor force.

In 1959, the California Legislature amended the law to allow unemployment insurance claimants to enroll in approved vocational training programs and continue to draw unemployment compensation, subject to several provisions. One provision limited the use of the program only to those periods during which unemployment exceeded 6 percent. Another limited the program, in any event, only to those claimants who had exhausted their regular unemployment insurance claims and who were claiming extended duration benefits. "Extended duration benefits" were provided by the Legislature under the Miller-Collier Act of 1959, not necessarily to allow for training, but for the purpose of providing additional unemployment insurance benefits when the unemployment rate rose above 6 percent.

Two years later, the Legislature amended once again the retraining provisions of the law. Retraining benefits were provided for normal as well as extended duration claimants. The 6 percent unemployment rate provision was dropped. Benefits could now be drawn, in effect, even though the claimant was unavailable for work due to retraining status. Section 1266 expressed the intent of the Legislature:

"1266. Experience has shown that the ability of a large number of the population of California to compete for jobs in the labor market is impaired by advancement in technological improvements and the widespread effects of automation and relocation in our

economy. It is the policy of this State to assist such individuals by providing unemployment compensation or extended duration benefits during a period of retraining to fit them for new jobs and thus avoid their being forced to remain in a job classification where work opportunities no longer exist or are diminishing."

Thus, job impairments arising from technological improvements, automation and relocation (of industry) were recognized as causal factors, with unemployment compensation and retraining proffered as at least a partial solution. Another section of the law expressed more precisely the determination criteria for eligibility for retraining benefits, Section 1269:

"1269. A determination of potential eligibility for benefits under this article shall be issued to an unemployed individual if the director finds that:

(a) Reasonable employment opportunities for which the unemployed individual is fitted by training and experience do not exist or have substantially diminished in the labor market area in this State in which he is claiming benefits.

(b) The retraining course of instruction relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in any labor market area in this State in which the individual intends to seek work.

(c) The retraining course of instruction is one prescribed by the Director of Employment.

(d) The individual has the required qualifications and aptitudes to complete the course successfully.

(Added by Stats. 1961, Ch. 38.)"

Clearly, this section of the law could be interpreted as providing retraining benefits in a rather liberal fashion, since each of "reasonable employment" opportunities, and "substantially diminished" occupational opportunities are only very general indications of legislative intent. Further, Section 1269 could have been interpreted (and was interpreted) as independent of Section 1266. Thus, a person with substantially diminishing employment prospects *not* caused by technological changes, automation and relocation became eligible for retraining benefits.

In 1967, the Director of Employment requested that the office of the Attorney General prepare an opinion on the proper interpretation of Sections 1266 and 1269 of the Unemployment Insurance Code. The director's request was prompted by the relatively broad manner in which the law was being interpreted. For example, Section 5730 of the Department of Employment's Local Office Manual (prior to January 15, 1968) advised that even though the reasons the applicant's employment opportunities have diminished are not directly attributable to any of the causes of worker displacement mentioned in 1266, the applicant may be found eligible if he meets the requirements of 1269.



In addition, the director's request was prompted by the obvious conflict between departmental policy and a series of decisions by the California Unemployment Insurance Appeals Board. In Benefit Decision 67-2378, it was held that the requirements set forth in Section 1269 must be "interpreted in the light of the policy expressed in Section 1266." The Appeals Board interpreted the sections more narrowly than the Department of Employment, a position upheld by the office of the Attorney General. The impact of the Attorney General opinion (December 6, 1967) is that retraining benefits should not be allowed where it has not been determined a relationship exists between technological improvements, automation and relocation, and the particular unemployed individual. Such retraining, according to the office of the Attorney General, is beyond the scope of the Unemployment Insurance Law.

The administrative impact of the Attorney General's opinion has begun to appear. (See later.) Department officials suggest that with newly revised guidelines for local offices, no more than 10 to 15 percent of the number of trainees in 1967 will be eligible in 1968.

Effective January 15, 1968, the Department of Employment revised its policies and procedures for determining eligibility for retraining benefits under Section 1269(a) of the code. The purpose of the revisions was to redefine eligibility for retraining benefits in accordance with the Attorney General opinion, being based on unemployment and diminished job opportunities *arising from and related to* automation, technological, and relocation factors.

The charge to the study committee in ACR 129, despite the department's revision, nonetheless remains. Basically, it is one of studying certain administrative criteria of the department, and various measures of performance with these criteria. With respect to criteria, the study committee has studied the procedures used:

(1) To determine whether the job opportunities of claimants are impaired for the reasons enumerated in Section 1266, thus making them eligible for retraining benefits;

(2) To determine whether reasonable employment opportunities exist in jobs for which claimants are being retrained; and

(3) To identify claimants who are in need of retraining for the reasons enumerated in Section 1266.

With respect to performance, the study committee cannot ascertain results under the revised criteria. Insufficient time has elapsed. It can and has determined, however, the answers to a number of questions charged, based on the previous procedures of the department, which were in force from the inception of the program until January 15, 1968. These questions concern the relationships, if any, between the length of unemployment, training, and duration of benefits; the use of employer information in identifying labor market conditions; the types of aptitude testing for claimant retrainees; the sources of employment and training relatedness of employment; etc. In addition, the study committee has examined the labor force attachment of retrainees subsequent to retraining.

## ADMINISTRATIVE CRITERIA

*Job Opportunity Impairment*

Under current revisions of procedure and policy, the department is able to use only general criteria to ascertain whether a retraining applicant's previous job has been impaired for the reasons enumerated in Section 1266. Broadly, the revisions charge local offices with the responsibility of developing documentation from public and private sources of labor market and general economic information to establish that job impairment indeed exists.

*Employer Contact*

Local offices are now instructed to refer, where deemed appropriate, to a previous employer of the claimant for information concerning whether the unemployment is due to automation, relocation, and technological factors. A two-question letter of inquiry is sent to a previous employer, presumably one that is representative of the claimant's previous employment which asks:

"During the period of this individual's employment with your firm, were there any changes in content, characteristics, or skill requirements for his job(s) because of technological improvements, automation, or relocation of all or part of your operations? If yes, how did these changes affect this individual." (Form # DE 3422L)

In essence, the department now asks the employer's judgment as to the cause of the unemployment, leaving definitions of automation, technological change, and relocation unsaid. For internal purposes, however, definitions of these factors are provided in the department's Local Office Manual. The efficacy of this procedure is unknown, but there may be incentive for the employer to deny the relationship, to the extent certification of such a relationship may affect charges to his reserve account.

*State and Federal Sources*

Beyond this administrative innovation, the department now requires those certifying eligibility for retraining benefits to document thoroughly their judgment that a claimant is unemployed for the reasons noted in Section 1266. Identification of displaced occupations through U.S. Bureau of Labor Statistics publications is emphasized for example, such as the "Occupational Outlook Handbook," "List of Currently Critical Occupations," "Technological Trends in Major American Industries," etc. State and local publications are also stressed as being useful information and documentation sources. Specifically mentioned are reports and articles on automation and technological change, including newspaper clipping, labor management agreements relating to workers affected by mechanization and technological change, industry briefs, employment service reviews, and many of the local office activity reports on occupational demand and surplus. Mention as an information source is also made of particular employers having specific knowledge of job content and job characteristics of train-

ees' former occupations. In general, a broad brush is used, directing the retraining interviewer to extend his search for documentary evidence to establish the eligibility of retrainees for benefits.

### *Criteria Implicit in Definitions*

While the previous is a generalized view of the revisions of the department, perhaps more indicative of the administrative intent of the department's revisions are its definitions of technological improvements and automation provided in the procedures manual. Section 5716, Local Office Manual, defines "technological improvements" as:

"... encompass[ing] not only the installation of new types of labor saving machinery but also simple changes in materials handling and the flow of work, changes in the resources mix used in **production**, the development and use of new and substitute products and equipment, and various managerial efficiencies installed to create more efficient and productive methods of cooperation, distribution, and services."

Clearly, the department views technological improvement as a generalized phenomenon, one which characterizes the entrepreneurial system. It seems equally clear that such a definition, when used as a guideline, can be broad in its application. Other than seasonal and cyclical unemployment, virtually all unemployment can be identified with "technological improvement."

"Substantially diminished or nonexistent employment opportunities" are also defined administratively by the department, in Section 5718 and 5719 of the Local Office Manual.

"... means that there is little or no demand for permanent full-time workers with his training and experience in his primary occupation or in additional suitable occupations for which he is fitted by training or experience, or that there is a substantial oversupply of unemployed workers in that occupation in the labor market area where he is claiming benefits. It includes the suitable work concept and the current skill requirements for the individual's occupation in his present labor market area. It *must be shown* that this claimant's ability for competition for re-employment is impaired because of the reasons enumerated in Section 1266 of the Code."

This definition, in relation to the previous, implies that the department will view technological improvements as an unemployment creating phenomenon in a rather confined geographic area, "the labor market area where he is claiming benefits." If there are job opportunities in other labor market areas, eligibility for retraining will not be denied, as long as technological change can be demonstrated. Perhaps other criteria, administratively, can be implied from these definitions, as well as other definitions in the Local Office Manual.

The previous procedures and definitions (such as the latter serve as guidelines) serve the department under its revisions to determine whether job opportunities of claimants are impaired.

### *The Existence of Employment Opportunities*

Whether employment opportunities exist in jobs for which claimants are being retrained seems to be determined by the same procedures used to identify whether job opportunities are impaired. That is, the sources used to determine job impairment reveal the reciprocal relationship. The department depends on the interviewer's best judgment as influenced by these sources that reasonable opportunities will exist by the end of the training course or shortly thereafter. Diminishing occupations are, of course, not considered for retraining, but those occupations in which the department expects an approximate balance between supply and demand in the area where the trainee intends to seek work are not excluded from consideration. The labor market area is administratively defined as determined by normal commuting patterns in the area where the trainee intends to seek work, basically the same criterion used for determining availability and suitability of work for unemployment insurance eligibility.

In fact, the emphasis of the department's revisions seems to rest more on determination of job impairment than it does on determination of job opportunity with respect to the retraining occupation. While procedures specify that current employer requirements are to be thoroughly considered, evidence of job opportunity is deemed to be provided by the same labor market sources as necessary to determine the former. The existence of community training programs, of course, certifies in effect the need for manpower. Moreover, the failure of retrainees to secure employment in the retrained occupation assures the early demise of such courses.

### *Identifying the Retraining Situation*

The department depends on the individual judgment of the claims interviewer and the manpower training specialist to initially identify the claimant as a potential retrainee. Each individual who files a claim and indicates an interest in training is scheduled for an interview. Written determination of potential eligibility is provided. (Neither the validity of the unemployment insurance claim, nor the eligibility for the employment insurance benefits need be resolved prior to determination of eligibility for retraining benefits.)

The department appears to be taking two courses of action with respect to the identification of claimants in need of retraining (and identification of occupational conditions generally). First, interviewers are expected to have knowledge of local and regional labor market conditions (and are evaluated on the basis with which they utilize this information). Their knowledge is gleaned from employer, union, state, and federal sources of economic information. Second, in keeping with one of the major objectives of the federal-state employment security program to develop and disseminate employment and other market information, the department is expanding data resources necessary to develop information for local office decisionmaking. Indicative of this expansion is the recently issued "Area Manpower Review" for the San Francisco-Oakland area (dated July 1968). In this report, which is intended to be a quarterly, the unemployment and employment outlook is presented, and in addition, occupational reports are presented.



In this issue, 46 occupations are listed in which excess demand, supply, or "balance" conditions are believed to exist. Additional occupations and geographic areas of coverage are planned.

Information for this publication is drawn from local unemployment insurance and employment service offices. A primary source of information from the employment service offices is the quarterly report on job openings and job applications, coupled with the judgment of the local office personnel concerning future conditions. While the employment service offices do not receive all applications or job orders for all occupations, sufficient breadth exists for the development of qualitative judgments concerning demand and supply conditions. Additional information is gathered from the major employers in the region and from the unions, with particular emphasis on those occupations not serviced by the employment service offices. From the unemployment insurance offices, information is gathered on the number of claims by occupation and industry. The latter is the primary source of information quantitatively, although these data are not developed without consideration of special analyses of industry trends and occupations.

In effect, the department is providing its own resources to assist local offices to determine whether claimants are in particular occupational demand and supply conditions, in addition to external sources noted. The validity of the conclusions drawn by the area offices, of course, is only as valid as are the impressions which are initially made at the local offices and subsequently interpreted. The lack of precise criteria (ratios of job applicants to job orders, occupational ratios of unemployed to employed, etc.) cannot be considered a shortcoming, however. But it is clear that this publication as well as others, and the specified procedures, indicate a new posture of the department, one of documentation by external and internal sources—from a tremendous amount of data and literature—that a specific claimant's unemployment is due to causes specified in the code. "Documentation" in this manner at the local office level, will undoubtedly become significant as a means of (1) identifying claimants in need of retraining, (2) identifying occupations which are impaired, and (3) identifying occupations wherein reasonable opportunities of employment will exist in the future. The link to technological change, automation, and relocation will be relatively easily accomplished.

#### CHARACTERISTICS OF SB 20 RETRAINEES

Over the 1962-67 period, a total of 18,776 claimants were found eligible for the receipt of benefits while in retraining status. Of these (see Table A), the bulk appeared to have actually enrolled in retraining courses, although available data are incomplete. More complete are data on completions of training: About 60 percent of those initially found eligible complete their chosen courses of instruction. The remainder do not complete, either for financial reasons, personal reasons, armed forces, sickness, and general lack of motivation.

Those who complete courses have enrolled in courses which average 30 weeks' duration, although there are over 35 percent of these "completers" who have enrolled in courses more than 27 weeks. Table B

classifies duration of courses in weeks by those completing and not completing their programs. Significantly, the average course length of the noncompleters is 12.8 weeks longer than that of the completers. The length of the course, it appears, is associated with the probability of completion. In addition, course lengths appear to be much longer than potential benefits under SB 20, since, as has been seen, most claimants draw benefits several weeks before undergoing retraining. It cannot be concluded that most of the training under this program is involved with relatively short-term courses. It is the policy of the Department of Employment not to deny benefits on the grounds that the course duration is greater than potential benefit duration.

Table C further defines the characteristics of SB 20 trainees. Only 15 percent of the claimants are "handicapped," but the definition of handicapped is not uniform. More than 80 percent of the claimants have been unemployed 26 weeks or less reflecting the obvious, that they would not be in the program unless they were entitled to and had not exhausted their unemployment insurance benefits which are a maximum of 26 weeks. Significantly, about 60 percent had less than 14 weeks of unemployment.

Perhaps most revealing of the characteristics of the SB 20 retrainees is Table D. and DD, the age and education of those enrolling. Virtually two-thirds have a high school education or more; 37 percent of these individuals are 24 years of age or less; 75 percent are 32 years of age or less. Thus, the program seems to have drawn a young and reasonably educated group. Several questions are raised by these data. One is obviously the question as to how such a young group of individuals could be considered as technologically unemployed when, particularly at the younger ages, it is difficult to conceive they had established work histories from which they could have been considered unemployed. However well meaning the intent of the department in attracting this particular group, it could not have been that group envisioned by the legislature in establishing the retraining provisions of the Unemployment Insurance Code. Surprisingly, those completing courses have markedly the same age and education composition as those enrolling in courses, which suggests these variables do not influence the probability of completion. Table DDD presents educational attainment of those completing SB 20 retraining. The distribution by grade level of completers does not differ from the distribution of those enrolling.

**TABLE A**  
**SB 20 BENEFIT TRAINEE DATA: ELIGIBLES, ENROLLED, COMPLETING**  
**AND DROPOUTS, 1962-67**

	Found eligible	Newly enrolled	Completing	Dropouts
1962 January-June.....	1,643	*	661	253
July-December.....	1,219		443	280
1963 January-June.....	1,478	*	494	294
July-December.....	1,268		634	340
1964 January-June.....	1,398		611	304
July-December.....	1,502	1,482	756	308
1965 January-June.....	2,150	2,130	1,045	382
July-December.....	1,524	1,512	1,450	394
1966 January-June.....	1,110	1,097	1,024	411
July-December.....	1,137	1,125	882	390
1967 January-June.....	2,162	2,133	884	450
July-December.....	2,185	2,152	1,359	643
	18,776	11,631	10,243	4,449

\* Data not available.

Source: Furnished by Department of Employment, Research and Statistics, June 1968.

**TABLE B**  
**NUMBER, PERCENTAGE AND CUMULATIVE PERCENTAGE OF SB 20 CLAIMANTS**  
**COMPLETING AND NOT COMPLETING RETRAINING BY**  
**WEEKS' DURATION, 1962-1967**

Duration in weeks	Completing			Not completing			Unknown		
	Number	Percent	Cumulative percent	Number	Percent	Cumulative percent	Number	Percent	Cumulative percent
1-6.....	1,129	13.7	13.7	159	4.7	4.7	13	7.8	7.8
7-13.....	1,542	18.7	32.4	348	10.3	15.0	25	15.1	22.9
14-20.....	1,404	17.0	49.4	460	13.6	28.6	22	13.3	36.2
21-26.....	887	10.7	60.1	371	11.0	39.6	16	9.6	45.8
27-40.....	1,303	15.8	75.9	632	18.7	58.3	36	21.7	67.5
41-100.....	1,742	21.1	97.0	1,103	32.7	91.0	36	21.7	89.2
101-199.....	261	3.2	100.0	300	8.9	100.0	18	10.8	100.0
Total.....	8,268	100.0	100.0	3,373	100.0	100.0	166	100.0	100.0

TABLE C

**SB 20 RETRAINEES: PHYSICAL STATUS, WEEKS UNEMPLOYED PRIOR TO RETRAINING, COUNSELING STATUS, CLASS STATUS, EMPLOYMENT STATUS, AND RETRAINING RELATIONSHIP, BY COMPLETION STATUS, 1962-1967**

	Course completed	Percent	Course not completed	Percent	Unknown if course completed
Handicapped.....	1,117	13.5	542	16.1	25
Not handicapped.....	7,155	86.5	2,831	83.9	141
Weeks unemployed					
Unknown.....	646	7.8	326	9.7	18
Less than 5.....	2,443	29.5	881	26.1	43
5-14.....	2,479	30.0	1,041	30.9	59
15-26.....	1,472	17.8	587	17.4	25
27-52.....	1,002	12.1	424	12.6	16
Over 52.....	230	2.8	114	3.4	5
Counseling status					
Counseled.....	2,522	30.5	1,075	31.9	52
Not counseled.....	5,578	67.4	2,163	64.1	103
Counseling not specified.....	172	2.1	135	4.0	11
Class status					
MDTA class.....	1,516	18.3	373	11.1	14
Not MDTA class.....	6,637	80.2	2,901	86.0	142
MDTA class not specified.....	119	1.4	99	2.9	10
Post training employment status					
Found employment.....	5,331	64.4	722	21.4	73
No employment found.....	2,118	25.6	1,009	29.9	19
Unknown.....	823	9.9	1,642	48.7	74
Post retraining employment relationship					
Training related.....	4,815	58.2	39	1.2	62
Not training related.....	576	7.0	724	21.5	10
Unknown.....	2,881	34.8	2,610	77.4	94
Totals.....	8,272	100.0	3,373	100.0	166
(Grand total.. 11,811)					

TABLE D

**AGE AND EDUCATION OF THOSE ENROLLING IN SB 20 APPROVED COURSES, 1962-1967**

Age	Highest grade completed					
	0 or unspecified	Under 8 years	8 years	9-11 years	12 years	Over 12 years
Unspecified.....	20	0	0	6	6	3
17-24.....	219	8	26	588	1,998	929
25-32.....	147	34	71	589	1,172	733
33-44.....	184	83	172	744	1,263	636
45-56.....	95	70	125	463	761	360
57 and over.....	11	12	27	60	65	43
Totals.....	676	207	421	2,450	5,265	2,704
(Grand total 11,723)*						

\* 1962-64 data incomplete.



TABLE DD  
PERCENTAGE DISTRIBUTION BY AGE AND EDUCATION OF THOSE ENROLLING  
IN SB 20 APPROVED COURSES, 1962-1967

Age	Highest grade completed							Total percent
	Number	0 or unspecified	Under 8 years	8 years	9-11 years	12 years	Over 12 years	
Unspecified.....	35	57.1%	--	--	17.1%	17.1%	8.6%	100%
17-24.....	3,768	5.8	.2%	.7%	13.6	53.0	24.7	100
25-32.....	2,746	5.4	1.2	2.6	21.4	42.7	26.7	100
33-44.....	3,082	6.0	2.7	5.6	24.1	41.0	20.6	100
45-56.....	1,874	5.1	3.7	6.7	24.7	40.6	19.2	100
57 and over.....	218	5.0	5.5	12.4	27.5	29.8	19.7	100
	11,723	5.8	1.8	3.6	20.9	44.9	23.1	100

TABLE DDD  
SB 20 CLAIMANTS COMPLETING RETRAINING BY EDUCATION

Total trainees completing	Unspecified	%	1-7 years	%	8 years	%	9-11 years	%	12 years	%	Over 12 years	%
8,272*	433	5.2	132	1.6	299	3.6	1,682	20.3	3,721	45.0	2,005	24.2

\* No data available for approximately 2,000 trainees.

*Similarity of Characteristics With MDTA Trainees*

The study committee has not been charged with the evaluation of the closely related retraining and training programs in California which might be considered duplicative with the SB 20 program. However, it is apparent that the characteristics of claimants in the SB 20 program are very similar to those in the MDTA program with respect to age, duration of unemployment prior to retraining or training and educational attainment. These data are presented in Table E.

TABLE E  
UNEMPLOYMENT, AGE, AND EDUCATION DATA FOR MDTA AND SB 20 TRAINEES

	1962-65 MDTA trainees*	1962-67 SB 20 trainees
Duration of unemployment		
Less than 5 weeks .....	26.0%	29.5%
5-14 weeks .....	20.0	30.0
15-26 weeks .....	12.0	17.8
27-52 weeks .....	11.0	12.1
Over 52 weeks .....	20.0	2.8
	100.0%	100.0%
Age		
Under 19 .....	7.0%	5.4%
19-21 .....	16.0	12.3
22-34 .....	35.0	51.7
35-44 .....	24.0	18.2
45 and over .....	17.0	12.4
	100.0%	100.0%
Educational attainment		
Less than 8th grade .....	4.0%	1.6%
8th grade .....	4.0	3.6
9-11 .....	25.0	20.3
12 .....	50.0	45.0
Over 12 .....	17.0	24.2
	100.0%	100.0%

\* Source: Department of Employment publications, and DE forms 3422F and B, 1962-67.

This similarity is understandable, given the similarity of the purpose of SB 20, and the Statement of Purpose in the Manpower Development and Training Act of 1962, as amended. Section 1266 of the California Unemployment Insurance Code refers to the intent of the Legislature in providing benefits for those whose job opportunities have diminished through technological developments, automation, and industry relocation. Similarly, Title I, Section 101 of the MDTA of 1962 reads:

“ . . . The Congress further finds that the skills of many persons have been rendered obsolete by dislocations in the economy arising from automation or other technological developments, foreign competition, relocation of industry, shifts in market demands, and other changes in the structure of the economy. . . . ”

Thus, the provisions for retraining in SB 20 and MDTA with respect to groups being anticipated as being attracted are identical.

There has been no attempt, or charge to the committee, to study the SB 20 program in terms of cost/benefit ratios. However, if cost and benefit criteria were to be used on this program, then it is inevitable that with claimants with these characteristics—young, reasonably well educated—a favorable ratio would emerge. If cost/benefit ratios are used, then it is inevitable that those near the employment line—that is, those nearer to employability will be retrained before the hard core groups. This is tantamount to noting that the cost of such retraining is low in retraining terms, making the cost/benefit ratio favorable. Socially, those closest to “success” are taken first: Those that are young, high school educated and better, with a work history sufficient to establish, at least, unemployment insurance benefits. It would appear that both programs have chosen their trainees wisely. (However, more recent trainees may not have these favorable characteristics.)

Beyond the similarity of claimants in terms of their retrainability, there appears a basic philosophical question with respect to the SB 20 program. The age-education-duration of unemployment characteristics of the group suggest that retraining is not at issue so much as is initial training for vocational skills. Whether this obligation, albeit it in terms of numbers only 10,000 individuals, should be financed through the unemployment insurance system is questionable. Moreover, the presence of the Federal program through MDTA, with superior financing arrangements for the trainee (books, incidental expenses, commuting costs, and subsistence in some cases) raises questions concerning the desirability of the program.

#### *Benefit Year, Course Date, and Application Date*

Our investigation has led us to determine the relationship between the date of application, date of course, and date of benefit year (BYB) in which claimants undertook training. This has been done on the grounds that it might reveal the sequence of events which led the claimants into trainee status. From this, further implications might be revealed concerning the time at which claimants entered training status and the motivations which encouraged the claimant to enter training status.

Table F compares date of application for eligibility for retraining (not benefits) with the date instruction begins. About 45 percent of claimants seem to have applied for determination of eligibility before the actual course of instruction; most of these claimants did so the week prior to the commencement of instruction. On the other hand, those applying for eligibility determinations after the course began are the majority. Most of this group applied considerably after the course began, and a large proportion did so only after more than eight weeks.

Table G compares the BYB date and the course date. Not surprisingly, this table reveals the majority (81.9 percent) of SB 20 claimants had already commenced their benefit year before applying for retraining eligibility determinations. The majority of this group seems to have done so as much as eight weeks before the course date. This pattern is substantiated by the previous data on length of unemployment prior to entering retraining status.

The sequence of events which leads to eligibility and course enrollment seems to be as follows from these data. Claimants become unemployed and draw benefits for a considerable period before they are identified by the department or encouraged by others to apply for eligibility, or convince themselves that they need retraining. At the time of application, slightly more than half (54.8 percent) are already initially enrolled in course, and the majority of these claimants appear to have been enrolled for more than two weeks. This is not to suggest that they are actually receiving unemployment insurance benefits while enrolled, even though they are not at the time determined to be eligible to receive benefits. (This latter point could not be developed, nor is inferred to be the case. There are no historical data; high retention costs of storage dictate obliteration of data.)

The data do suggest a number of possibilities. One is that the department is not able to identify claimants in need of retraining at the time their benefit year begins. This possibility can only be suggested, but it is reasonable to assume that the initial claimant contact (the Eligibility Benefit Rights Interview) is more directed toward determining factors other than retraining possibilities.

Two, it may be that claimants, hoping for a short duration of unemployment, or for other reasons, refuse to consider retraining status. Publications of the department suggest that claimants do, in fact, tend to resist entering retraining status, at least initially. Later, as the duration of unemployment increases, the claimants become more receptive to department efforts.

Three, it is possible that claimants enter into courses of instruction during unemployment status, and by suggestion of the retraining agency apply for an eligibility determination. Further, it is possible that information concerning retraining benefits is used by the retraining agency to induce, however subtly, the unemployed to enroll in the course of instruction. Conversely, the claimants may enter course of instruction while employed, and when becoming unemployed, apply for an eligibility determination at the suggestion of the retraining agency or the department. The large percentage of claimants who apply for determinations after the course date suggests that this third possibility is a real one. Unfortunately, the possibility cannot be established further without extensive and expensive data.\*

\* Note that these data comprise all those who applied for an eligibility determination and were subsequently found eligible, and enrolled. Although over 29,000 claimants applied, only 11,464 subsequently enrolled and attended long enough to be classified by the department as a "dropout" or as a completer. In Table A, it was indicated the dropouts and completers were  $10,243 + 4,449 = 14,692$ . The difference between the two sets of data are believed to be due to missing source documents and the fact that some claimants may have applied for benefits after enrolling but did not attend long enough to receive benefits. Further, some of the data extend into 1968 whereas the previous data terminates in 1967. The distortions introduced by these differences are believed to be very small.



TABLE F

DATE SB 20 COURSE BEGINS IN RELATION TO DATE OF APPLICATION FOR BENEFITS

Application date before course date			Application date after course date		
Weeks	Number	Percent of grand total	Weeks	Number	Percent of grand total
1-----	3,437	30.0	Concurrent-----	867	7.6
2-----	897	7.8	1-----	1,644	14.3
3-----	275	2.4	2-----	803	7.0
4-----	104	.9	3-----	485	4.2
5-----	42	.4	4-----	313	2.7
6-----	33	.3	5-----	243	2.1
7-----	22	.2	6-----	200	1.7
8-----	15	.1	7-----	152	1.3
8-----	359	3.1	8-----	112	1.0
			8-----	1,461	12.7
Totals-----	5,184	(45.2%)	Totals-----	6,280	(54.6%)
Grand total:	11,464	(100.0%)			

Source: DE 3422F and 3422B, 1962-67.

TABLE G

BENEFIT YEAR DATE IN RELATION TO COURSE DATE

BYB date before course date			BYB date after course date		
Weeks	Number	Percent of grand total	Weeks	Number	Percent of grand total
1-----	783	6.8	Concurrent-----	46	.4
2-----	567	4.9	1-----	384	3.3
3-----	494	4.3	2-----	212	1.8
4-----	505	4.4	3-----	138	1.2
5-----	415	3.6	4-----	106	.9
6-----	400	3.5	5-----	103	.9
7-----	361	3.2	6-----	82	.7
8-----	324	2.8	7-----	72	.6
8-----	5,517	48.2	8-----	63	.5
			8-----	892	7.8
Totals-----	9,366	(81.7%)	Totals-----	2,098	(18.1%)
Grand total:	11,464	(100.0%)			

Source: DE 3422F and 3422B, 1962-67.

*Testing of Claimants for Retraining*

Among the selection tools used by the Department of Employment to identify claimants' abilities to undertake training is testing. A number of tests are used. The nature of these tests need not be elaborated; however, they are general and special aptitude tests, involving manual and mental abilities. Data concerning the extent of such testing are incomplete. Source documents where such data are supposed to be avail-

able are incompletely recorded or were not available. No attempt was made to determine the nature of the testing in relation to particular types of retraining. It can be reported, however, that approximately 55 percent of those completing courses of instruction had not received testing of any sort. Those *not* completing courses are tested at almost the identical level, 55.3 percent. There are insufficient data to determine any further information concerning testing. See Table H.

**TABLE H**  
**TESTS USED TO DETERMINE SUITABILITY FOR RETRAINING UNDER SB 20 PROGRAM**

	Completers	Dropouts
None.....	55.4%	55.3%
General aptitude.....	21.7	21.2
Miscellaneous specified.....	4.9	3.6
Miscellaneous unspecified.....	18.0	19.9
	100.0%	100.0%

#### *Occupational Relatedness of SB 20 Claimants*

Perhaps the most crucial test of the value of the retraining program is the extent to which claimants, on completion of training, were able to find employment. Whether such employment is training related is, of course, pertinent to the purposes of the program. Redirection into manpower shortage areas is one of the goals of the program. The Department of Employment has previously reported \* that 62 percent of those completing training had found employment within 30 days (through November 1965) and of these, the bulk (89 percent) were in training related occupations. There are, however, some difficult problems in defining "training related" occupations. Classification systems have varied over time, most noticeably by the use of the new Dictionary of Occupational Titles (USBLS-BES) which went into effect in July 1966. Nonetheless, it would appear that about the same percentage of claimants now find training related occupations. From Department of Employment data (Table C), 64.4 percent of those completing found employment (presumably within 30 days) and 58.2 percent found related employment ( $58.2/64.4 = 90.4$  percent). Post-retraining relationships are not known, however, for a considerable portion of claimants (34.8 percent).

Of those completing retraining, information concerning the means by which they secure employment is sketchy. For 36.6 percent, no information could be developed. Almost the same percentage found employment by themselves. Less than 20 percent found employment through the retraining school. California State Employment Service came out a poor third. Generally, the means used to seek employment is not a function of age. (Table I.)

\* Assembly Interim Committee on Finance and Insurance, January 20-21, 1966 Hearings, San Francisco.

TABLE I  
SB 20 CLAIMANTS COMPLETING RETRAINING BY AGE  
AND SOURCE OF EMPLOYMENT

Age	Source of employment				Number of claimants	Percent of total claimants
	Unknown	CSES	School	Self		
Unspecified.....	20	3	0	4	27	.3
17-24.....	867	195	569	930	2,561	31.0
25-32.....	655	148	450	675	1,928	23.3
33-41.....	803	216	371	809	2,199	26.6
45-56.....	587	125	168	516	1,396	16.9
57 and over.....	71	9	23	58	161	1.9
Totals.....	3,003	696	1,581	2,992	8,272	100.0
	(36.3)	(8.4)	(19.1)	(36.7)	(100.0)	

### Employment Characteristics of SB 20 Claimants

Previously, the ratio of high-quarter earnings to total base period wages for claimants was compared by different variables. Base period wages, of course, involve four quarters of coverage. For SB 20 claimants, eight quarters of wage data are available, giving a greater longitudinal view of claimants under this program. Using eight quarters of wage information (calendar years 1966 and 1967) presents a few problems in interpretation, which might be eased by reflecting on a claimant who was retrained, say, in 1964, and earned \$4,000 in 1966 and \$4,000 in 1967. A high-quarter to two-year total wages ratio of 30 percent (\$2,400/8,000) would indicate earnings for the high quarter at \$800 per month, while for the remaining seven quarters, an average of \$266 per month (\$5,600/21 months). This assumes, of course, that such a claimant worked throughout the eight-quarter period. If he had worked only 16 months of the 24, then his monthly average for the high quarter would have remained \$800, but his average for the remaining periods in which he worked would be \$350 or \$5,600/13 months. In both cases, the disparity between the high quarter and the average of the remaining quarters is greater than one might intuitively expect the claimant to have incurred under these assumptions. An alternate assumption seems more plausible, that the claimant worked less than the eight quarters, and probably less than the 16-month period, since the claimant probably would not have enjoyed such a large jump in earnings. The shorter the base period, the more "reasonable" the assumption about earnings pattern. Note also that a pattern of increasing wages over the eight quarter period *increases* the stability ratio. A compounded growth rate in wage of approximately 10 percent per annum, which appeared as a 26-percent stability ratio, under the high-quarter assumption of \$800 per month, would indicate an average wage of about \$325 per month for the 21 months.

Regardless, the high-quarter/two-year ratio can be viewed as a surrogate for continuity of employment for SB 20 claimants. Generally, the higher the ratio, the shorter the period over which the claimant worked. (The only other explanation for a high ratio is that the

claimant has wages which fluctuate widely in amount, which can be rejected more easily than can the explanation that the claimant does not earn any wages for some periods—for any number of reasons.)

This rather extended interpretative note is necessary since what data are available require cautious interpretation. Table J presents earnings patterns for claimants who completed retraining in 1964 and those that completed retraining in 1965; there are also data for those dropping out (not completing) retraining. About 23 percent of those males completing retraining in 1964 had no records in the Department of Employment which indicated they were employed in 1966 or 1967; for those completing retraining in 1965, 16.1 percent apparently were not employed in 1966 and 1967. Assuming that stability ratios of 24.9 percent and less are indicative of "steady" employment, about one-half (49.5 percent) of claimants completing in 1964 were in this status, and a little more than one-half (54.8 percent) of the 1965 retrainees were in this status. If two years is sufficient for tentative observations, it would appear that retraining has diminishing effect: 1965 completers have steadier employment than 1964 completers. The pattern seems to hold true for females as well.

Among females, substantially more had no apparent earnings: 31.5 percent for 1964 retrainees and 22.5 percent for 1965 retrainees. Adding the high instability group (50.0–100 percent) to the no-earnings group reveals that 40 percent of the 1964 female completers, and 35.4 percent of the 1965 completers did not work, or worked less than one-half the 1966–67 period. Rather discouraging is the pattern, in one sense, of the female completers and the noncompleters. Employment stability is similar between the two groups, suggesting that the completion of the course in not an influential variable in increasing employment stability.

TABLE J  
EARNINGS STABILITY OF 1964 AND 1965 SB 20 CLAIMANTS IN 1966  
AND 1967 BY SEX AND COMPLETION STATUS

	Earnings stability—high-quarter earnings as percent of 1966 and 1967 wages					
	12.5-14.9	15.0-24.9	25.0-37.4	37.5-49.9	50.0-100	No wages
<b>Males</b>						
Completing in:						
1964.....	8.1	41.4	8.7	8.1	10.7	23.0
1965.....	8.8	46.0	9.9	4.5	14.3	16.1
Not completing in:						
1964.....	3.8	36.8	11.3	3.8	11.3	33.0
1965.....	6.0	37.7	13.1	7.5	10.7	25.0
<b>Females</b>						
Completing in:						
1964.....	10.4	31.7	8.7	5.2	9.5	31.5
1965.....	6.5	35.8	14.3	6.0	14.9	22.5
Not completing in:						
1964.....	3.6	33.3	11.9	4.8	11.9	34.5
1965.....	6.9	27.5	11.9	8.1	14.4	31.3



Among males, it would appear that *not* completing the courses of instruction has some influence on employment stability. Those not employed among the noncompleters are substantially greater than the no employment group among completers: 33.0 percent to 23.0 percent for the 1964 group, and 25.0 percent to 16.1 percent for the 1965 group. Comparing the under 25 percent stability group, with respect to completers and noncompleters, approximately a 10 percent differential emerges. Thus, whereas for the 1964 completers, 49.5 percent of the males had "steady" employment in 1966-67; for the 1964 noncompleters, only 40.6 percent had "steady" employment. For the 1965 group, the comparable figures are 54.8 percent and 43.7 percent, showing, it is hoped, some effect of completing instruction, although suggesting again the fading effect of the retraining process.

For those claimants completing courses of instruction or dropping out in 1966, only four quarters of wage data are logically used, those for calendar 1967. Table K presents the data, which is more encouraging concerning the goals of retraining, but nonetheless reinforcing earlier observations. Among males, 52.6 percent of completers had highly stable employment, 44.8 percent of the noncompleters; 9.9 percent of the completers had no wages and another 5.1 percent worked only three months at the maximum among the completers. Among noncompleters, 19.9 percent had no wages and another 4.5 percent worked only three months or less. (A wage stability ratio of 100 percent indicates all earnings were in one quarter.) For females, it is ironical to note that the steady employment characteristic was more prevalent for the noncompleters (45.7 percent) than it was for the completers (38.9 percent), but this must reflect that some claimants "drop out" from retraining due to employment opportunities. At the other end of the scale, while more of the noncompleters had no wages, adding in the 100-percent category, reveals that the female completers are more unstable than noncompleters (25.6 percent to 24.0 percent).

**TABLE K**  
**EARNINGS STABILITY OF 1966 SB 20 CLAIMANTS IN 1967**  
**BY SEX AND COMPLETION STATUS**

	Earnings stability—high-quarter earnings as percent of 1967 wages				
	25.0-33.3	33.4-49.9	50.0-99.9	100.0	No wages
<b>Males</b>					
Completing-----	52.6	16.8	15.5	5.1	9.9
Not completing-----	44.8	15.0	15.8	4.5	19.9
<b>Females</b>					
Completing-----	38.9	16.4	19.5	8.2	17.4
Not completing-----	45.7	14.1	16.2	2.1	21.9

*Recent Benefit Payments Under SB 20 Program*

No attempt has been made to pursue an analysis of the financial condition of the SB 20 program in this study. However, the effect of the Attorney General ruling should be noted. Below is a list of the benefits paid under the program for the 13 months since September 1967:

1967	September	-----	\$72,054
	October	-----	97,750
	November	-----	103,231
	December	-----	86,011
1968	January	-----	96,772
	February	-----	86,816
	March	-----	97,755
	April	-----	105,219
	May	-----	85,010
	June	-----	82,719
	July	-----	28,272
	August	-----	22,608
	September	-----	14,248

Two observations can be made from viewing the benefits pattern since September 1967. One, the effect of the revisions of policies and procedures by the Department of Employment can be seen, beginning in July 1968. Although the revisions were announced in January 1968, it was not until summer, 1968, when the full effect of the revisions was felt at the local office level. Benefit payments in September 1968 were approximately one sixth of the average benefits immediately before the revisions. Given the onus of documentation of unemployment caused by technological improvement, automation, and relocation, it is logical to expect the payments under the program would have diminished. This may be, however, a transitional effect, which will continue until such time as the local offices become more proficient at identifying and documenting unemployment and retraining situations arising from Section 1269(a) causes.

It is also clear that a second factor has influenced the benefits paid recently. Employment levels in California are currently very high; they have been generally rising over the last year. This obviously increases the opportunity costs of those considering retraining, causing them to forsake such courses of instruction in the face of employment opportunities. Alternately, there are fewer situations wherein unemployment arising from and related to technological improvements, automation, and relocation occurs. Both elements seem to be a factor in reducing the flow of benefits under the program.

Assuming the present pattern of benefits continues under the program, (at \$15,000 per month, the benefits would amount to \$180,000 per year) there is some reason to question whether the program is justified, administratively. Costs of administration, whether absorbed indirectly by the system or not, should certainly be examined in view of the benefit amounts. On the other hand, one might recognize that the program stands ready to accommodate retraining situations when the employment level falls, or when Section 1269(a) factors become more influential (if those can be separated from falling employment levels.)

The readiness of the program to accommodate changing economic conditions cannot be denied, but this is not solely an advantage. The difficulty in identifying the retraining situation continues, even with newly revised policies and procedures. While there may be formal identification of the retraining situation, there is the disadvantage that the program may be used as a general training program, rather than a retraining program. This may be perfectly acceptable philosophically, but it is not in concurrence with the intent of the Legislature, reinforced by Attorney General ruling, as expressed in Section 1269(a) of the Unemployment Insurance Code. As noted earlier, the program also duplicates in considerable fashion the Manpower Development and Training Act program, but is far less comprehensive both with respect to coverage, amount of benefits paid, and type of benefits.

The SB 20 program is currently (and for that matter, in the past as well) a very small portion of the unemployment insurance system in California. It might be characterized, in a way, as symbolic of the viewpoint that the unemployment insurance system should relate as closely as possible to the problems of the less tractable among the unemployed groups. This viewpoint stresses that the system cannot safely isolate itself from the mainstream of efforts to deal with current economic and social problems, since to do so would damage its main function. A contrary viewpoint considers the program of unemployment insurance in a more restricted framework. This study, with respect to its emphasis on availability questions, reflects this contrary viewpoint, that of using the program in such a way that its ability to deal with the more limited problem of temporary unemployment is strengthened. Such emphasis in a program reflects that temporary unemployment is the crucial problem *for the unemployment insurance system*. Implicitly, this viewpoint suggests that extending the program into such areas as retraining arises more often from the convenience of the administrative machinery than from the logic of the new function being performed by *this* system.

The continuance of programs within the system should arise from deliberate public policy review, not from the inertia of decisions made prior to other programs apart from the unemployment insurance system. A major argument supporting the establishment of the SB 20 program in 1959 and the subsequent amendments to it was that no viable program existed to retrain claimants whose unemployment was caused by technological improvements, automation, and relocation in the economy and whose prospects of reemployment were adjudged to be minimal without retraining. As already indicated, the Manpower Development and Training Act and other federal programs now dominate in the retraining area. Thus, the continuance of the SB 20 program within the California Unemployment Insurance system is not justified unless it can be supported by deliberate public policy review.

## APPENDIX A

State of California  
Department of Employment  
Report 525A #2

Research and Statistics  
August 2, 1968

### CALIFORNIA UNEMPLOYMENT INSURANCE PROGRAM

**Effect of Requirement That a Claimant Disqualified for Voluntary Leaving Employment or Discharged for Misconduct Must Earn Five Times His Weekly Benefit Amount Before Being Eligible for Benefits**

An amendment to the Unemployment Insurance Code with an effective date of September 17, 1965, provided that a claimant disqualified for voluntarily leaving his most recent employment without good cause or for being discharged for misconduct, must have earnings in bona fide employment equal to at least five times his weekly benefit amount before being eligible for benefits. Prior to September 17, 1965, a claimant disqualified on these issues was required to serve a fixed five-week disqualification period.

This survey is based on a 1-percent sample of disqualifications on the issues of voluntary leaving or discharge for misconduct during 1966 under the provisions of the new law. (Disqualifications made in 1966 under the old statute because the disqualifying act occurred prior to September 17, 1965, were excluded from the sample. The sample disqualifications under the new law do not, therefore, give an accurate estimate of the total of claimants disqualified on these issues during the period.)

Among the 921 claimants in the sample who were disqualified under the new law, 706, or 77 percent, were selected because they had a voluntary leaving disqualification, and 215, or 23 percent, because they had a discharge for misconduct disqualification. Six percent, or 52 of the claimants in the sample, had more than one such disqualification during the benefit year. About two-thirds, 613, of the sample were men, and one-third, 308 were women. (See Table 1.) Three-fourths of the claimants were disqualified when they filed their new claim at the beginning of their benefit year.

About 58 percent of the disqualified claimants drew no benefits in their benefit year; another 15 percent who had drawn some benefits before disqualification, drew none after the disqualification. Thus, a total of 73 percent of the claimants did not draw any benefits subsequent to disqualification, while the remaining 27 percent drew some benefits. About 26 percent of the claimants disqualified for voluntary leaving drew benefits after disqualification, compared with 31 percent of those disqualified for discharge for misconduct, but, this difference is not large enough to be statistically reliable.

Approximately 31 percent of the men who were disqualified drew benefits after disqualification, while only 20 percent of the women did.

The proportion of claimants drawing benefits after disqualification varied with the age of the claimants: this proportion was highest for those in the middle age group, 45 to 54 years of age, and lowest for those under 25 years of age and for those 65 years or older. (See Table 2.)



Among men, the highest proportions of those drawing benefits subsequent to disqualification occurred among those with higher weekly benefit amounts, while among women the highest proportions occurred among those with low weekly benefit amounts (particularly those with the minimum \$25 weekly benefit). (See Table 3.)

The disqualification has a differential effect on claimants in certain industries, reflecting the availability to them of short-term jobs. About 47 percent of the men who had worked in wholesale trade and 43 percent of those from contract construction drew benefits after being disqualified. (See Table 4.) Among women, the highest proportion of those drawing benefits after disqualification had worked in eating and drinking places (the figures for the canning and wholesale trade industries are too small to be reliable).

A total of 330 claimants, or 36 percent, purged their disqualification during their benefit year, and of those, 250, or about three out of four, actually drew some benefits after purging. An additional 299<sup>a</sup> claimants, comprising about one-third of the sample, had earned sufficient wages in covered employment before the end of their benefit year to have purged the disqualification, but they did not return to the local office to clear their record. Some of these claimants, however, purged the disqualification after the close of their benefit year when they filed a claim to establish a new benefit year.<sup>b</sup>

Among the 693 claimants who were disqualified at the very beginning of their benefit year, 196 purged the disqualification and drew some benefits; they received an average of 11.6 full weeks of benefits. Among all claimants, those who received a first payment in 1966 drew an average of 13.0 weeks of benefits.

Among the 228 claimants in the sample who were disqualified when they filed an additional claim, 54 purged the disqualification and drew some benefits after the disqualification. These claimants drew an average of 7.1 weeks of benefits after being disqualified and an average of 11.5 weeks in their benefit year.

Of the 921 disqualified claimants in this sample, 39, or about four percent, exhausted their benefits. Among all claimants, the number who exhausted their benefits during 1966 represented 18 percent of those who filed valid new claims in the same year.

The claimants involved in this study filed their claims in late 1965 or during calendar year 1966 and their benefit years extended through 1967. These were years of expanding employment with the unemployment rate holding steady around five percent. The findings of the study should be interpreted in terms of this economic context, and may not be easily extrapolated to different economic situations.

Complete earnings records were not available for all claimants, so that this figure is somewhat understated.

An unpurged disqualification on the issue of voluntary leaving or discharge for misconduct does not expire at the end of the benefit year if the effective date of the disqualification is subsequent to the date the benefit year began. If the date of disqualification is the same as the date the benefit year began, the disqualification expires at the end of the benefit year, since the earnings required to satisfy the lag period eligibility provision are necessarily sufficient to purge the disqualification.

TABLE 1  
**CHARACTERISTICS AND BENEFIT EXPERIENCE OF A ONE PERCENT SAMPLE OF  
 CLAIMANTS DISQUALIFIED IN 1966 FOR VOLUNTARY LEAVING  
 OR DISCHARGE FOR MISCONDUCT <sup>a</sup>**

Item	Total claimants disqualified	No benefits drawn in benefit year	Drew benefits before but not after disquali- fication	Drew benefits after disquali- fication
Total, all claimants.....	921	529	142	250
Percentage.....	100.0%	57.5%	15.4%	27.1%
Number of men.....	613	312	113	188
Percentage.....	100.0%	50.9%	18.4%	30.7%
Number of women.....	308	217	29	62
Percentage.....	100.0%	70.5%	9.4%	20.1%
Number disqualified for voluntary leaving....	706	410	113	183
Percentage.....	100.0%	58.1%	16.0%	25.9%
Number disqualified for discharge for mis- conduct.....	215	119	29	67
Percentage.....	100.0%	55.3%	13.5%	31.2%
Number disqualified on new claim.....	693	497	0	196
Percentage.....	100.0%	71.7%	0	28.3%
Number disqualified on additional claim.....	228	32	142	54
Percentage.....	100.0%	14.0%	62.3%	23.7%
Number with 26 weeks potential duration....	653	386	89	178
Percentage.....	100.0%	59.1%	13.6%	27.3%
Number with less than 26 weeks potential du- ration.....	268	143	53	72
Percentage.....	100.0%	53.4%	19.8%	26.9%
Number earning sufficient wages to purge dis- qualification.....	629	298	81	250
Percentage.....	100.0%	47.4%	12.9%	39.7%
Number who purged disqualification during benefit year.....	330	70	10	250
Percentage.....	100.0%	21.2%	3.0%	75.8%

<sup>a</sup> Claimants disqualified under provisions that were in effect prior to September 17, 1965, were excluded from the sample.

TABLE 2

**BENEFIT EXPERIENCE OF A ONE PERCENT SAMPLE OF CLAIMANTS DISQUALIFIED IN 1966 FOR VOLUNTARY LEAVING OR DISCHARGE FOR MISCONDUCT BY SEX AND AGE**

Age group	Total claimants disqualified		No benefits drawn in benefit year	Drew benefits before but not after disqualification	Drew benefits after disqualification	
	Number	Percent			Number	Percent of total
Men and Women combined, Total.....	921	100.0%	529	142	250	27.1%
Under 25.....	257	28.5	150	46	61	23.7
25-34.....	257	28.5	155	34	68	26.5
35-44.....	187	20.7	102	27	58	31.0
45-54.....	116	12.9	64	13	39	33.6
55-64.....	68	7.5	35	16	17	25.0
65 and over.....	17	1.9	12	2	3	17.6
Age INA.....	19	--	11	4	4	--
Men, Total.....	613	100.0%	312	113	188	30.7%
Under 25.....	169	28.1	87	37	45	26.6
25-34.....	182	30.3	97	32	53	29.1
35-44.....	126	21.0	60	20	46	36.5
45-54.....	66	11.0	32	9	25	37.9
55-64.....	43	7.1	19	11	13	30.2
65 and over.....	15	2.5	10	2	3	20.0
Age INA.....	12	--	7	2	3	--
Women, Total.....	308	100.0%	217	29	62	20.1%
Under 25.....	88	29.2	63	9	16	18.2
25-34.....	75	24.9	58	2	15	20.0
35-44.....	61	20.3	42	7	12	19.7
45-54.....	50	16.6	32	4	14	28.0
55-64.....	25	8.3	16	5	4	16.0
65 and over.....	2	0.7	2	0	0	0.0
Age INA.....	7	--	4	2	1	--

TABLE 3

**BENEFIT EXPERIENCE OF A ONE PERCENT SAMPLE OF CLAIMANTS DISQUALIFIED IN  
1966 FOR VOLUNTARY LEAVING OR DISCHARGE FOR MISCONDUCT  
BY SEX AND WEEKLY BENEFIT AMOUNT**

Weekly benefit amount	Total claimants disqualified		No benefits drawn in benefit year	Drew benefits before but not after disqualification	Drew benefits after disqualification	
	Number	Percent			Number	Percent of total
Men and women combined, total.....	921	100.0%	529	142	250	27.1%
\$25.....	78	8.5	42	16	20	25.6
26-29.....	61	6.6	31	16	14	23.0
30-34.....	96	10.4	59	17	20	20.8
35-39.....	87	9.4	49	13	25	28.7
40-44.....	88	9.6	57	10	21	23.9
45-49.....	93	10.1	62	16	15	16.1
50-54.....	81	8.8	47	13	21	25.9
55-59.....	93	10.1	51	21	21	22.6
60-64.....	74	8.0	41	3	30	40.5
\$65.....	170	18.5	90	17	63	37.1
Men, total.....	613	100.0%	312	113	188	30.7%
\$25.....	45	7.3	24	13	8	17.8
26-29.....	27	4.4	13	9	5	18.5
30-34.....	42	6.8	18	12	12	28.6
35-39.....	39	6.4	19	8	12	30.8
40-44.....	44	7.2	24	6	14	31.8
45-49.....	63	10.3	36	14	13	20.6
50-54.....	57	9.3	27	12	18	31.6
55-59.....	72	11.7	36	19	17	23.6
60-64.....	60	9.8	30	3	27	45.0
\$65.....	164	26.8	85	17	62	37.8
Women, total.....	308	100.0%	217	29	62	20.1%
\$25.....	33	10.7	18	3	12	36.4
26-29.....	34	11.0	18	7	9	26.5
30-34.....	54	17.5	41	5	8	14.8
35-39.....	48	15.6	30	5	13	27.1
40-44.....	44	14.3	33	4	7	15.9
45-49.....	30	9.7	26	2	2	6.7
50-54.....	24	7.8	20	1	3	12.5
55-59.....	21	6.8	15	2	4	19.0
60-64.....	14	4.6	11	0	3	21.4
\$65.....	6	2.0	5	0	1	16.7



TABLE 4

**BENEFIT EXPERIENCE OF A ONE PERCENT SAMPLE OF CLAIMANTS DISQUALIFIED IN  
1966 FOR VOLUNTARY LEAVING OR DISCHARGE FOR MISCONDUCT  
BY SEX AND INDUSTRY**

Industry division and selected industries	Total claimants disqualified		No benefits drawn in benefit year	Drew benefits before but not after disquali- fication	Drew benefits after disqualification	
	Number	Percent			Number	Percent of total
Men and women combined, total.....	921	100.0%	529	142	250	27.1%
Contract construction.....	57	6.2	15	19	23	40.4
Manufacturing.....	315	34.2	196	44	75	23.8
Canning and preserving fruits, vegetables, and sea foods.....	11	1.2	6	4	1	9.1
Apparel and other finished products made from fabrics and similar ma- terials.....	14	1.5	9	2	3	21.4
Electrical machinery, equipment, and supplies	33	3.6	22	8	3	9.1
Aircraft and parts.....	35	3.8	20	5	10	28.6
Transportation, communica- tion, electric, gas, and sanitary services.....	52	5.6	30	9	13	25.0
Wholesale and retail trade.....	277	30.1	147	43	87	31.4
Wholesale trade.....	47	5.1	19	7	21	44.7
Automotive dealers and gasoline service stations	47	5.1	23	8	16	34.0
Retail trade—eating and drinking places.....	72	7.8	35	14	23	31.9
Services.....	161	17.5	96	21	44	27.3
All other industries.....	59	6.4	45	6	8	13.6
Men, total.....	613	100.0%	312	113	188	30.7%
Contract construction.....	53	8.6	12	18	23	43.4
Manufacturing.....	233	38.0	135	37	61	26.2
Canning and preserving fruits, vegetables, and sea foods.....	8	1.3	4	4	0	0.0
Apparel and other finished products made from fabrics and similar ma- terials.....	4	0.7	2	1	1	25.0
Electrical machinery, equipment, and supplies	19	3.1	11	6	2	10.5
Aircraft and parts.....	25	4.1	13	4	8	32.0
Transportation, communica- tion, electric, gas, and sanitary services.....	39	6.4	20	9	10	25.6
Wholesale and retail trade.....	177	28.9	84	31	62	35.0
Wholesale trade.....	38	6.2	14	6	18	47.4
Automotive dealers and gasoline service stations	44	7.2	20	8	16	36.4
Retail trade—eating and drinking places.....	36	5.9	16	9	11	30.6
Services.....	84	13.7	44	14	26	31.0
All other industries.....	27	4.4	17	4	6	22.2
Women, total.....	308	100.0%	217	29	62	20.1%

TABLE 4—Continued

**BENEFIT EXPERIENCE OF A ONE PERCENT SAMPLE OF CLAIMANTS DISQUALIFIED IN  
1966 FOR VOLUNTARY LEAVING OR DISCHARGE FOR MISCONDUCT  
BY SEX AND INDUSTRY**

Industry division and selected industries	Total claimants disqualified		No benefits drawn in benefit year	Drew benefits before but not after disquali- fication	Drew benefits after disqualification	
	Number	Percent			Number	Percent of total
Contract construction.....	4	1.3	3	1	0	0.0
Manufacturing.....	82	26.6	61	7	14	17.1
Canning and preserving fruits, vegetables, and seafoods.....	3	1.0	2	0	1	33.3
Apparel and other finished products made from fabrics and similar ma- terials.....	10	3.2	7	1	2	20.0
Electrical machinery, equipment, and supplies	14	4.5	11	2	1	7.1
Aircraft and parts.....	10	3.2	7	1	2	20.0
Transportation, communica- tion, electric, gas, and sanitary services.....	13	4.2	10	0	3	23.1
Wholesale and retail trade.....	100	32.5	63	12	25	25.0
Wholesale trade.....	9	2.9	5	1	3	33.3
Automotive dealers and gasoline service stations	3	1.0	3	0	0	0.0
Retail trade—eating and drinking places.....	36	11.7	19	5	12	33.3
Services.....	77	25.0	52	7	18	23.4
All other industries.....	32	10.4	28	2	2	6.2

## APPENDIX B

## DOMESTIC LEAVING: EXPERIENCE SUBSEQUENT TO DISQUALIFICATION

Amount of monetary disqualification	Number of benefits drawn subsequently	Drew benefits	Total
\$25-30.....	2	2	4
31-35.....	2	1	3
36-40.....		1	1
41-45.....			
46-50.....	4	1	5
51-55.....	1	2	3
56-60.....	2		2
61-65.....	4		4
Total.....	15	7	22

Source: Review of Claimant Files, N = 3,000 (females 998).

## APPENDIX C

### Narrative Summaries: Able and Available Disqualifications

#### SINGLE DISQUALIFICATIONS

##### *Child Care and Related Problems*

Claimant lived five miles from the nearest labor market. She had no private transportation, was new in the area, and knew no one with whom she could ride. No public transportation was available. She has a four-year-old child but has no arrangements for care of the child prior to 9 a.m. or after 5 p.m. or for the weekends. Her regular occupation is that of waitress. To be eligible, the claimant would have to be available for at least two out of three shifts, including weekends.

(Claimant was given an indefinite disqualification. Later in her benefit year the claimant had one false statement determination and two additional able and available determinations, none of which was disqualifying.)

Claimant stated she is unable to work full-time because her husband objects. She has an 18-month-old baby. On her last job she worked two days a week and her mother cared for the baby. (Claimant was given an indefinite able and available disqualification.)

Claimant was willing to work only the graveyard shift. She had no arrangements made for child care during the day and did not want to work the swing shift because she wanted to spend the evening with her family. Her occupation is as an injection molder, which is on a 24-hour basis, and therefore she would have to be available for two of the three shifts. (Claimant was disqualified indefinitely, but the disqualification was lifted when she made arrangements for child care during the day. Later in her benefit year the claimant had another able and available determination, but it was not disqualifying.)

Claimant was called by the department in regard to an offer of work but was unable to accept the referral because her daughter was ill with the flu. (Disqualified as unavailable for one week.)

Claimant is available for work only from the hours of 9 a.m. to 3 p.m. She has a 10-year-old son who gets home daily at 3:30 p.m. whom she does not want to leave alone. Also, on Mondays and Fridays after he gets home she takes him to a religious school. Claimant has not considered child care because she does not feel that her earnings warrant it. (Claimant was disqualified indefinitely as unavailable. Later in her benefit year this claimant had a refusal of suitable work and two additional able and available determinations, none of which was disqualifying.)

Claimant was babysitting for her daughter's children who were ill and unable to go to the regular sitter. (Claimant disqualified for one week as unavailable. Earlier in her benefit year this claimant had simultaneous determinations on an able and available issue and a voluntary quit issue, neither of which was disqualifying.)

Claimant said she was not able to work or look for work because her babysitter had entered the hospital for an operation. (Claimant was given an indefinite disqualification as unavailable. Later in her benefit year she had three additional determinations on able and available issues, none of which was disqualifying.)

Claimant did not have arrangements for care of her child and therefore was available for only evening shift work, when her husband would take care of the child. (Claimant was disqualified indefinitely is unavailable, but the disqualification subsequently was lifted when she said she had obtained a babysitter.)

#### *Failure to Report to Union in Accordance With "Seek-Work" Plan*

Claimant was disqualified for one week because he failed to meet rolleall at the union.

Claimant disqualified for one week because he did not report to his union for rolleall because he did not have transportation. (Prior to being disqualified this claimant had one discharge for misconduct and two able and available determinations, none of which was disqualifying.)

Claimant disqualified for one week because he missed rolleall. His position dropped from 190 to 317 on the list. (Claimant had a subsequent, nondisqualifying false statement determination.)

Claimant disqualified for one week because he failed to register with his union. Claimant stated he did not know he had to register every week. Instructions in regard to registering are contained in the handbook given to claimants at time of filing claims. (Claimant was subsequently disqualified during his benefit year for a voluntary quit without good cause.)

Claimant had failed to register with his union for about three months because he was behind in his dues. Since the union is one which controls the hiring in his trade as a butcher, his failure to maintain his standing with the union renders him unavailable for work. The claimant did not attempt to seek work in a nonunion shop. (Claimant disqualified indefinitely.)

Claimant failed to register with his union, International Brotherhood of Electrical Workers, which controls practically all the hiring in this field. (Claimant disqualified for two weeks.)

#### *Inadequate Search for and Failure to Seek Work*

Former employer tried three times during the week to get in touch with claimant because work was available, but was unable to reach her. Claimant stated to department she did not want to work that week because she wanted to rest. (Disqualified for one week.)

When asked by department, claimant could not remember names or addresses of any employers contacted about employment. (Disqualified for one week.)

Claimant was out of town, traveling with a friend who was looking for work. He did not look for work for himself. (Disqualified for one week.)

The only effort made by the claimant to find work consisted of reading the newspaper want ads and contacting her last employer by phone. (Disqualified for one week. Claimant had a nondisqualifying able and available determination later in her benefit year.)



Claimant had been told by department he must make at least six contacts per week seeking employment. He failed to comply with these instructions. (Disqualified for one week. Claimant had a prior, non-disqualifying determination on a voluntary quit issue.)

This claimant's usual occupation is waitress. She is available for work only from 6 a.m. to 6 p.m.; in her occupation she must be available for two out of three shifts to be considered eligible. Furthermore, she had not been looking for work as a waitress but as a truck driver, an occupation in which she has had very limited experience and in which there are few opportunities for women. (Claimant was disqualified indefinitely.)

Claimant left the Los Angeles area to go to Florida. During the first week there she did not show any employer contacts on the interstate claim form. The second week she listed two banks she said she had contacted regarding employment. The third week she listed the same two banks as her only contacts. The department held that the claimant had removed herself from her normal labor market, was not genuinely seeking work in Florida; and had failed to overcome the presumption that the purpose of her trip to Florida was to visit relatives rather than to relocate there. (Claimant disqualified for three weeks. Subsequent to this disqualification the claimant had two determinations on discharge for misconduct issues, neither of which was disqualifying.)

#### *Incarceration*

Claimant was incarcerated for approximately two days. (Claimant disqualified for one week. Prior able and available and discharge for misconduct determinations; both nondisqualifying.)

This claimant was incarcerated for two weeks and subsequently made no employer contacts in an effort to find work. (Claimant disqualified for three weeks.)

Claimant was incarcerated during the week, and the following week failed to report to the department to register for work. (Claimant disqualified for two weeks. Claimant had a prior discharge for misconduct determination, held to be nondisqualifying.)

#### *Transportation*

Claimant lives in an area from which there is no public transportation other than the Greyhound bus, which is one mile away. Her husband uses the family car for transportation. (Claimant was given an indefinite disqualification which was lifted when her husband made arrangements for a ride with a fellow worker. Claimant had two subsequent able and available determinations, both nondisqualifying.)

Claimant moved to an area where the closest public transportation was three miles from her home. Her husband used the family car for work and left at 5 a.m. (Claimant was given an indefinite disqualification. Claimant had a subsequent, nondisqualifying able and available determination.)

#### *Self-employment*

Claimant was a part owner in a go-go restaurant and bar operation, which was under investigation by the Internal Revenue Service and the Department of Alcoholic Beverage Control. The establishment eventu-

ally was closed; but as the claim had been filed two weeks prior to the closing, the claimant was considered to have been self-employed. (Claimant disqualified for two weeks.)

Claimant bought a 1½-ton truck and started hauling wood, thus he was considered to be self-employed. (Claimant was disqualified indefinitely, but the disqualification was lifted when he sold his truck. Claimant had two additional able and available determinations and a refusal of suitable work determination during his benefit year, all non-disqualifying.)

Claimant leased a catering truck and went into business for himself. (Claimant was disqualified indefinitely, but the disqualification was lifted when he turned the truck back.)

#### *Attendance at School*

Claimant was attending school full time, carrying 16 units. He was available for work for only limited hours. (Claimant disqualified indefinitely.)

Claimant is attending school five days a week, carrying 12 units. He stated he would quit school if offered work, but his minimum acceptable wage is \$4 per hour. His only efforts to find work consisted of reading the want ads and telephoning the State Employment Service. (Claimant was disqualified indefinitely.)

Claimant is attending school full time. He is available for work only during limited evening hours. (Claimant was disqualified indefinitely.)

#### *Illness in Family and Other Personal Affairs*

Claimant would have been unable to work for four days because of her obligations in connection with the illness of her father. (Claimant was disqualified for one week. Claimant had prior able and available and discharge for misconduct nondisqualifying determinations.)

Claimant left the state on personal business. (Claimant disqualified for one week.)

Claimant was out of the state for eight days due to a death in the family. (Claimant was disqualified for one week. Claimant had a subsequent nondisqualifying able and available determination.)

Claimant made several trips during the week, moving his belongings from Fresno to Santa Ana. (Claimant disqualified for one week. Claimant had a subsequent nondisqualifying refusal of suitable work determination.)

### MULTIPLE DISQUALIFICATIONS

#### *Simultaneous—Voluntary Quit Without Good Cause and Not Able or Available*

Claimant voluntarily quit her job because her husband had been unemployed for 1½ years and she felt her quitting would give him an incentive to find work. She stated she did not want to work at this time. (Disqualified indefinitely on able and available issue.)

Claimant voluntarily quit to return to school. He was offered work on the second shift but would not accept anything but the graveyard shift, which was being eliminated. Claimant is attending school during

the day and is carrying 13 units. (Disqualified indefinitely on able and available issue.)

Claimant quit her job at a convalescent hospital when she was asked to go on the swing shift on a temporary basis. She made no attempt to find child care for her children for the swing shift. (Disqualified indefinitely on able and available issue.)

Claimant voluntarily quit his job because he was building a duplex for his father-in-law. Because of rain he was unable to finish the duplex. The claimant then registered with the union, but failed to meet rollcall the following two weeks because he was working on the duplex. (He was disqualified indefinitely on the able and available issue.)

Claimant voluntarily quit her job in September because she had earned the maximum allowed under social security without loss of benefits. She was given an indefinite disqualification on the able and available issue because she does not want to work more than three days a week. Her normal occupation is sales clerk. (Disqualified indefinitely on able and available issue.)

Claimant quit his job on the night shift because he wished to increase his workload at school. (He was disqualified indefinitely as unavailable.)

Claimant voluntarily quit his job to enroll in a course which was approved by the department for retraining. However, as he had voluntarily quit prior to enrolling, the quit was without good cause. (He was also given an indefinite able and available disqualification.) Subsequently, this claimant got a job with another firm and earned enough to "purge" the voluntary quit disqualification. He then quit to go to school under the approved retraining course. The department found the claimant eligible this time. The last employer for whom the claimant worked appealed this determination, but the Appeals Board upheld the determination.

Claimant quit her job at a convalescent hospital where she was working the graveyard shift at her own request. She said she was exhausted as a result of not obtaining enough sleep. She did not request a transfer to another shift and she had no child care arrangements for her four children, ages 13, 9, 8 and 6. (She was given an indefinite able and available disqualification.)

Claimant quit his job because he wanted to go to Texas to look for work and to visit his relatives. (He was disqualified indefinitely on an able and available issue because he has no transportation and no money with which to buy a car. He depends on relatives and friends to provide him with transportation.)

Claimant had been employed for approximately four years at a hatchery, working approximately 20 hours per week. She quit when she was asked to work full time. The claimant is engaged in self-employment farming with her husband, and there are times when she must devote full time to the ranch which they operate. Also, she has only part-time child care arranged. (She was given an indefinite able and available disqualification.)

Claimant quit his job as a busboy because he was not earning enough to support his family. Although he has no other trade, he was unwilling to look for or accept work in his usual occupation. (He was disqualified indefinitely on the able and available issue.)

*Simultaneous—Voluntary Quits Without Good Cause, Leaving for Domestic Reasons, and Able and Available Disqualifications*

Claimant voluntarily quit because of pregnancy, though not required by employer to do so. Quit was held to be a leaving for domestic reasons. (Claimant was held not available for work as her doctor has restricted her to part time or temporary employment.)

Claimant quit her job where she had been a store manager because her husband did not want her to work nights, Saturdays or Sundays. The quit was without good cause and was for domestic reasons. Also she would not work more than 32 hours a week, with no evening, Saturday or Sunday work. (Claimant was also held to be unavailable for work.)

Claimant voluntarily quit her job when she discovered she was one month pregnant, although not told to do so by her doctor. Although claimant was a waitress, she stated she cannot work Saturdays, Sundays or after 6 p.m. as she has no child care arrangements for those hours. The voluntary quit was held to be for domestic reasons and she was found to be unavailable during normal working hours in her occupation.

Claimant quit her job when she reached the seventh month of pregnancy because she mistakenly thought that was company policy. The voluntary quit was held to be without good cause; and the voluntary leaving was for domestic reasons. The claimant stated she was still able to work, but her doctor would not so certify until after the checkup six weeks after the birth of the child. (Claimant was therefore found to be unavailable for work.)

Claimant was terminated by her employer in accordance with company policy with regard to pregnancy; therefore, a voluntary quit issue was not involved but claimant was disqualified because of domestic circumstances. She also was found to be unavailable because she stated she would not work any evenings, drive after dark or on the freeways or work on Saturdays. Claimant had worked in a department store.

*Simultaneous—Voluntary Quit With Good Cause but Able and Available Disqualification*

Although the claimant voluntarily quit following a dispute with a fellow employee, she stated the real reason for her quit was that her health was affected by the air conditioner. Claimant has previously drawn disability benefits. She was found physically able to work but was disqualified on an able and available issue because she had no transportation until after 4 p.m. This disqualification was lifted when she obtained transportation. The claimant drew benefits for seven weeks and then was disqualified for failure to seek work.

Claimant quit her job when her supervisor refused to let her leave work each day at 3 p.m. to pick up her children from school. The claimant said she would make up the time on Saturday. The quit was with good cause, but the claimant was disqualified because of a leaving for domestic reasons. Claimant had no child care arrangements from 3 p.m. to normal quitting time and therefore was disqualified as being not available for work.



Claimant quit her job as a clerk in a liquor store because of an injury to her knee. Quit was found to be for good cause. After recovery, claimant was indefinitely disqualified as being unavailable because she had no arrangements for care of her three-month-old child after 3 p.m. This disqualification was lifted when the claimant obtained the necessary child care.

Claimant quit to move with her husband to another area. Quit was for good cause, but claimant was disqualified on the domestic leaving issue. She also is disqualified as unavailable because she will not accept permanent full-time employment.

Claimant was compelled to leave her job when her babysitter left because of illness. She was found to have quit with good cause but was held unavailable because she had no child care for her five-year-old. (There is no indication in the record that the department considered the leaving for domestic reasons issue that appears to be present.)

Claimant quit to care for her daughter who had suffered an emotional breakdown. Voluntary quit was held to be with good cause but claimant was held unavailable for work because she was caring for her daughter's children. (There is no indication in the record that the department considered the leaving for domestic reasons issue that may be present.)

***Simultaneous—Discharge for Misconduct and Able and Available Disqualification***

Claimant was discharged from her job at a convalescent hospital where she was employed as a nurse's aid because she could not get to work until after the 3 p.m. starting time. It was necessary for her to wait until her older child got home from school to stay with a younger child. As her employer had agreed that she could start at a later hour, the discharge was held to be not for misconduct. Claimant subsequently attended school as a beautician from 8 a.m. to 2:30 p.m.; and as she was not available for two of three shifts as a nurse's aid, she was disqualified as not available.

Claimant was discharged because of repeated absences due to poor arrangements for transportation. In eight months he was absent 35 times according to the employer's records. He was disqualified because of misconduct and also was indefinitely disqualified as unavailable because of lack of adequate transportation.

***Simultaneous—Refusal of Suitable Work Without Good Cause and Able and Available Disqualification***

Claimant is a PBX operator and has no other skills. She refused two referrals to work because she did not want to work after 5 p.m. and has no child care arrangements made. Claimant was not disqualified for refusals of the referrals, but she was disqualified as not available because of lack of child care. The able and available disqualification subsequently was lifted when she obtained adequate child care.

Claimant refused an offer of suitable work as a trainee at a starting wage of \$2 an hour. He would not work for less than \$2.25. He was disqualified for refusal of suitable work and given an indefinite

able and available disqualification because of the unreasonable restriction on wages. He subsequently had two determinations on voluntary quit issues, both of which were found to be with good cause. He finally was disqualified indefinitely as not available because of attendance at school.

Claimant was disqualified for refusal of part-time employment, 25 hours a week, as a waitress. She also was held to be not available as the part-time job would have permitted her to look for full-time work. Claimant had been unemployed for five months at the time of the disqualifications.

Claimant refused an offer of suitable work as a service station attendant because he wanted to have his weekends free to visit relatives. As this is a type of work in which work on weekends is normal he also was found unavailable.

*Simultaneous—False Statement and Able and Available Disqualification*

Claimant missed two offers of suitable work due to failure to report to his union, which controls practically all the hiring of maritime workers in his area. He also refused one offer of suitable work because he did not want to sleep in the top bunk. He was not disqualified because of refusal of suitable work, but was found to be unavailable for the weeks he failed to report to his union. He also was disqualified on the false statement issue because he failed to reveal to the department that he has been offered work and that he had missed job calls.

Claimant was on his way to a job when his car broke down. He called the employer who offered to come and pick him up, but the claimant refused because he wanted to repair the car himself. Claimant was disqualified for one week as not available and was given a false statement disqualification because he failed to reveal the pertinent information when he made out his certification card for benefits for that week.

*Simultaneous—Able and Available and Able and Available*

Claimant failed to seek work and was disqualified for one week. Claimant also was given an indefinite able and available disqualification for health reasons. He drew disability benefits for a time and then reopened the unemployment insurance claim. Following reopening of the claim, claimant had two additional able and available determinations, neither of which was disqualifying.

Claimant was incarcerated for 10 days. Following his release, he failed to register with his union for work for five more days and therefore could not have been dispatched. Claimant was disqualified for three weeks; because he was not available for work and because of failure to seek work after he was released.

Claimant was taking care of her daughter who had just had a baby. She was disqualified for two weeks as being not available for work and for failing to seek work.

Claimant stated he did not look for work because his car was broken down and he did not get it repaired until Thursday. Claimant was disqualified for one week for being without transportation and for failure to seek work.

Claimant was disqualified for one week as not available because of illness. He was disqualified for one week because he made no effort to find work, giving as his reason that he was trying to change occupations because he does not want factory work. Later in his benefit year claimant had another able and available determination for failure to seek work and a refusal of suitable work determination, neither of which was disqualifying.

#### *Time Separated Multiple Disqualifications*

Claimant is a dancer and model. She was disqualified as not available to seek work for one week because she was traveling from Studio City, California, to Dallas, Texas. She previously had been found not available for reasons of health.

Claimant was disqualified for one week as not available because he was incarcerated for four days. During his benefit year he had three additional able and available determinations and one refusal of suitable work determination, none of which was disqualifying. Also, he was disqualified during his benefit year because of a voluntary quit without good cause.

Claimant was training full time every day as an auto salesman. He was disqualified indefinitely as unavailable because of participation in a course of training. He also had two voluntary quits without good cause determinations later in his benefit year, one of which was disqualifying.

Claimant was disqualified for one week as not available because he was out of the area for eight days to attend the funeral of his father. The claimant also had a prior disqualification for a false statement.

Claimant was disqualified for one week as not available when she left the state to take care of some personal business. Later in her benefit year she had a nondisqualifying refusal of suitable work determination and still later was disqualified because of a voluntary quit without good cause.

Claimant was given an indefinite disqualification as not available because she does not wish to do other than factory work although she has little experience in that line; refuses to drive after dark or in winter weather. She had made only one contact in an effort to find work. Prior to this disqualification, the claimant had been disqualified on a health issue and on a voluntary quit without good cause.

# APPENDIX D

## ABSOLUTE NUMBERS, TABLES 5 THROUGH 13

TABLE 5

### AWARD DURATION RATIO TO EARNINGS STABILITY (BY SEX)

Actual duration of claim as a percent of total authorization	Earnings stability—high-quarter earnings as a percent of total wages for the base year					
	UNK*	0-33.3	33.4-49.9	50.0-74.9	75.0-99.9	100.0
<b>Males</b>						
0- 9.9.....	188	830	452	195	43	32
10.0-19.9.....	83	282	168	48	9	4
20.0-29.9.....	46	164	114	54	13	6
30.0-39.9.....	37	156	135	37	15	1
40.0-49.9.....	23	99	121	30	8	4
50.0-59.9.....	30	99	106	43	8	6
60.0-69.9.....	14	88	112	35	6	3
70.0-79.9.....	13	53	70	43	8	4
80.0-89.9.....	16	58	79	32	10	5
90.0-100.....	48	249	347	296	111	57
<b>Females</b>						
0- 9.9.....	0	438	217	139	26	8
10.0-19.9.....	0	112	72	29	7	3
20.0-29.9.....	1	95	52	22	4	1
30.0-39.9.....	1	78	62	14	3	1
40.0-49.9.....	0	47	63	13	4	3
50.0-59.9.....	0	53	50	23	6	1
60.0-69.9.....	0	55	49	23	5	1
70.0-79.9.....	0	29	35	16	4	1
80.0-89.9.....	0	33	48	17	2	1
90.0-100.....	2	236	223	291	108	37

\* Assumed to be highly stable.



TABLE 6  
TOTAL EARNINGS IN BASE YEAR TO EARNINGS STABILITY (BY SEX)

Total earnings in base year (1967)	Earnings stability—high-quarter earnings as a percent of total wages for the base year				
	0-33.3	33.4-49.9	50.0-74.9	75.0-99.9	100.0
<b>Males</b>					
Less than \$1,000.....	3	23	65	41	44
\$1,000-\$1,499.....	3	59	142	70	43
1,500- 1,999.....	4	107	136	61	18
2,000- 2,999.....	42	259	216	42	13
3,000- 3,999.....	120	293	137	12	2
4,000- 4,999.....	223	305	66	2	1
5,000- 5,999.....	360	221	27	1	0
6,000- 6,999.....	449	189	14	2	1
7,000- 7,999.....	364	114	5	0	0
8,000- 8,999.....	276	90	3	0	0
9,000- 9,999.....	234	44	2	0	0
10,000 and up.....	400*	98*	0*	0*	0*
<b>Females</b>					
Less than \$1,000.....	4	39	129	69	34
\$1,000-\$1,499.....	23	152	248	81	17
1,500- 1,999.....	45	174	128	14	6
2,000- 2,999.....	218	308	72	4	0
3,000- 3,999.....	337	135	6	1	0
4,000- 4,999.....	286	33	2	0	0
5,000- 5,999.....	161	19	2	0	0
6,000- 6,999.....	70	6	0	0	0
7,000- 7,999.....	20	3	0	0	0
8,000- 8,999.....	11	2	0	0	0
9,000- 9,999.....	1	0	0	0	0
10,000 and up.....	4*	0	0	0	0

\* Estimated.

TABLE 7  
TYPE OF FIRST DISQUALIFICATION IN CURRENT BENEFIT YEAR  
TO EARNINGS STABILITY (BY SEX)

Type of disqualification	Earnings stability—high-quarter earnings as a percent of total wages for the base year					
	UNK*	0-33.3	33.4-49.9	50.0-74.9	75.0-99.9	100.0
<b>Males</b>						
None.....	431	1,634	1,383	620	193	102
Voluntary quit/misconduct..	28	264	148	94	21	14
Domestic leaving.....	NA	1	1	0	1	0
Efforts to seek work.....	3	8	6	11	0	0
Able and available.....	16	82	85	45	6	2
Other reasons.....	19	74	53	29	10	2
From prior year.....	1	15	28	14	0	2
<b>Females</b>						
None.....	--	767	642	423	139	46
Voluntary quit/misconduct..	--	170	78	65	16	3
Domestic leaving.....	--	48	17	14	5	1
Efforts to seek work.....	--	21	9	9	2	1
Able and available.....	--	105	79	53	6	3
Other reasons.....	--	58	41	23	1	2
From prior year.....	--	7	5	0	0	1

\* Assumed to be highly stable.

TABLE 8  
TOTAL EARNINGS IN BASE YEAR TO TYPE OF FIRST DISQUALIFICATION (BY SEX)

Total earnings in base year	Type of first disqualification						
	None	Vol. mis- conduct	Domestic leaving	Efforts to seek work	Able and available	Other reasons	From prior year
<b>Males</b>							
Less than \$1,000-----	131	22	1	2	10	8	2
\$1,000-\$1,499-----	225	51	0	3	17	14	7
1,500-1,999-----	251	39	1	1	22	8	4
2,000-2,999-----	419	74	0	7	35	23	14
3,000-3,999-----	432	77	1	2	23	21	8
4,000-4,999-----	475	65	0	1	30	23	3
5,000-5,999-----	488	66	0	3	25	21	6
6,000-6,999-----	531	68	0	3	22	22	9
7,000-7,999-----	412	40	0	1	20	8	2
8,000-8,999-----	320	23	0	1	13	9	3
9,000-9,999-----	681	44	0	4	20	30	2
<b>Females</b>							
Less than \$1,000-----	199	36	7	5	22	5	1
\$1,000-\$1,499-----	382	54	8	10	50	16	1
1,500-1,999-----	277	26	12	5	29	16	2
2,000-2,999-----	424	62	15	6	36	36	3
3,000-3,999-----	319	79	11	7	56	20	5
4,000-4,999-----	214	40	23	4	38	12	1
5,000-5,999-----	125	22	5	3	27	14	0
6,000-6,999-----	48	12	3	0	7	6	0
7,000-7,999-----	17	1	1	2	1	1	0
8,000-8,999-----	11	0	0	0	2	0	0
9,000-9,999-----	6	0	0	0	0	0	0

TABLE 9

## NUMBER OF NONMONETARY DETERMINATIONS TO EARNINGS STABILITY (BY SEX)

Number of nonmonetary determinations	Earnings stability—high-quarter earnings as a percent of total wages for the base year					
	UNK	0-33.3	33.4-49.9	50.0-74.9	75.0-99.9	100.0
Males						
None.....	355	1,297	1,058	456	136	71
One.....	102	480	373	219	56	39
Two.....	30	189	173	88	24	8
Three.....	4	57	64	38	11	4
Four or more.....	7	54	35	12	4	0
Females						
None.....	5	455	440	296	98	34
One.....	0	396	258	169	46	15
Two.....	0	183	98	77	17	5
Three.....	0	88	44	28	7	3
Four or more.....	0	52	31	17	1	0

TABLE 10  
AWARD DURATION RATIO TO TYPE OF FIRST DISQUALIFICATION (BY SEX)

Actual duration of claim as a percent of authorized total	Type of first disqualification					
	None	Vol. quit/ misconduct	Domestic leaving	Efforts to seek work	Able and available	Other reasons
<b>Males</b>						
0 - 9.9	1,214	379	1	4	60	46
10.0-19.9	508	35	1	2	21	25
20.0-29.9	336	25	1	2	12	18
30.0-39.9	322	22	0	3	20	10
40.0-49.9	241	17	0	2	13	11
50.0-59.9	239	14	0	3	17	16
60.0-69.9	215	17	0	1	16	9
70.0-79.9	159	13	0	1	9	8
80.0-89.9	168	8	0	1	14	6
90.0-100	963	39	0	9	55	38
	4,365					
<b>Females</b>						
0 - 9.9	407	248	65	9	68	25
10.0-19.9	175	10	3	7	14	13
20.0-29.9	135	12	1	3	15	9
30.0-39.9	126	13	3	3	7	7
40.0-49.9	103	7	0	1	12	8
50.0-59.9	94	11	1	1	18	7
60.0-69.9	101	7	1	2	12	10
70.0-79.9	72	0	0	3	7	2
80.0-89.9	73	2	2	4	11	8
90.0-100	736	22	9	9	82	36



TABLE 11  
TOTAL EARNINGS IN BASE YEAR TO AWARD DURATION RATIO (BY SEX)

Total earnings in base year	Award duration ratio—actual duration of claim as a percent of total authorization									
	0.0-9.9	10-19.9	20-29.9	30-39.9	40-49.9	50-59.9	60-69.9	70-79.9	80-89.9	90-100
Males										
Less than \$1,000-----	54	6	11	7	7	9	6	3	3	70
\$1,000-\$1,499-----	97	16	14	15	10	19	8	16	8	114
1,500-1,999-----	88	17	19	15	16	12	11	9	18	121
2,000-2,999-----	160	47	32	37	31	26	19	16	22	182
3,000-3,999-----	146	46	40	43	33	29	30	27	19	144
4,000-4,999-----	163	64	47	38	38	37	42	18	37	120
5,000-5,999-----	170	79	43	42	26	31	48	32	27	111
6,000-6,999-----	225	83	52	51	45	40	29	21	21	88
7,000-7,999-----	177	59	44	37	19	26	27	19	13	62
8,000-8,999-----	154	53	20	39	21	23	12	7	9	31
9,000-9,999-----	308	125	75	57	39	40	26	23	23	65
Unknown-----	188	83	46	37	23	30	14	13	16	48
Females										
Less than \$1,000-----	64	13	6	9	5	14	9	4	4	147
\$1,000-\$1,499-----	112	30	21	21	22	24	16	19	22	234
1,500-1,999-----	83	23	26	19	18	13	22	16	15	132
2,000-2,999-----	186	49	44	41	30	31	30	18	25	148
3,000-3,999-----	167	59	33	28	21	29	24	9	16	93
4,000-4,999-----	131	29	20	17	19	11	15	7	11	61
5,000-5,999-----	51	13	17	15	11	4	11	8	7	45
6,000-6,999-----	23	4	3	5	4	6	5	2	0	24
7,000-7,999-----	5	2	2	1	0	0	0	2	1	10
8,000-8,999-----	5	1	2	2	0	1	1	0	0	1
9,000-9,999-----	1	0	1	1	0	0	0	0	0	2
Unknown-----	0	0	1	1	1	0	0	0	0	2

TABLE 12  
**AWARD DURATION RATIO TO NUMBER OF NONMONETARY  
 DETERMINATIONS (BY SEX)**

Actual duration of claim as a percent of total authorization	Number of nonmonetary determinations				
	None	One	Two	Three	Four
<b>Males</b>					
0- 9.9	1,138	428	118	38	19
10.0-19.9	101	119	49	17	6
20.0-29.9	256	93	26	16	6
30.0-39.9	248	67	45	9	12
40.0-49.9	172	63	32	10	7
50.0-59.9	167	68	33	14	10
60.0-69.9	143	56	38	12	9
70.0-79.9	110	55	11	9	6
80.0-89.9	123	40	26	5	6
90.0-100	614	280	135	48	31
<b>Females</b>					
0- 9.9	345	356	82	31	14
10.0-19.9	106	75	29	8	5
20.0-29.9	93	46	16	13	7
30.0-39.9	70	39	29	14	7
40.0-49.9	66	36	18	8	3
50.0-59.9	62	24	29	13	4
60.0-69.9	53	29	24	9	17
70.0-79.9	46	25	7	5	2
80.0-89.9	46	27	10	8	10
90.0-100	441	227	136	61	32

TABLE 13

## TOTAL EARNINGS IN BASE YEAR TO NUMBER OF NONMONETARY DETERMINATIONS (BY SEX)

Total earnings in base year	Number of nonmonetary determinations				
	None	One	Two	Three	Four
<b>Males</b>					
Less than \$1,000	90	54	18	11	3
\$1,000-\$1,499	154	91	48	17	7
1,500-1,999	171	98	33	17	7
2,000-2,999	295	151	72	34	16
3,000-3,999	318	141	68	22	15
4,000-4,999	357	137	70	21	12
5,000-5,999	369	147	61	13	19
6,000-6,999	437	132	51	19	15
7,000-7,999	345	94	32	7	5
8,000-8,999	266	66	21	10	6
9,000 and over	573	155	39	7	7
<b>Females</b>					
Less than \$1,000	140	79	29	19	8
\$1,000-\$1,499	263	156	62	27	13
1,500-1,999	179	118	46	17	7
2,000-2,999	315	166	75	24	21
3,000-3,999	205	119	69	37	18
4,000-4,999	117	112	48	25	19
5,000-5,999	61	71	29	12	9
6,000-6,999	27	21	15	7	6
7,000-7,999	9	7	5	2	0
8,000-8,999	6	5	2	0	0
9,000 and over	6	0	0	0	0

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